ORIGINAL

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

BLUE CROSS AND BLUE SHIELD OF NEW JERSEY, et al., Plaintiffs, vs. PHILIP MORRIS, INCORPORATED, et al., Defendants.	Case No. 98 Civ. 3287 (JBW)

March 30, 2000

9:39 a.m.

Videotaped deposition of ARTHUR J. STEVENS, held at the offices of Dewey Ballantine, LLP, 1301 Avenue of the Americas, New York, New York, pursuant to notice, before Cary N. Bigelow, RPR, a Notary Public of the State of New York.

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

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Stevens

A R T H U R J. S T E V E N S, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. BSCHORR:

Q. Good morning, Mr. Stevens.

A. Good morning, sir.

Q. I will be asking you a number of questions today and if there is anything that is confusing or you don't understand, will you tell me so that we get accurate answers to the questions?

A. I will.

Q. Thank you very much.

What is your position at Lorillard today?

A. I am retired.

Q. When did you retire, sir?

A. On January 1 of this year.

Q. Prior to that, your position was what?

A. My last position was senior adviser.

Q. How long had you held that position?

A. From approximately September 28th of 1998 through December 31 of 1999.

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Q. Prior to that, you were general counsel?

A. I was senior vice president and general counsel.

Q. How long did you hold that position?

A. I was general counsel for the period from March 17, 1969 through September 27, 1998. As I recall, I was vice president, I think, in 1971 and senior vice president 1979.

Q. Other than your positions -- excuse me, are those the only positions you have held at Lorillard over the years since 1969 when you joined it?

A. Yes.

Q. Other than those positions, have you held any other positions in any organization related to tobacco?

A. Yes.

Q. What are those?

A. From time to time throughout the 30 years, I was a member of the board of directors of the Tobacco Institute and I was a member of the board of directors of the Council for Tobacco Research.

Q. Approximately what years were you a

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member of the board of the Council for Tobacco Research?

A. I am not exactly sure. I think I became a member of the board of directors of CTR sometime around 1979 or 1980, perhaps later.

Q. How long did you serve in that capacity?

A. Until December of 1999.

Q. When you retired?

A. Yes.

Q. How about the board of Tobacco Institute?

A. I think I went on the board of the Tobacco Institute earlier, probably as early as '73, '74, '75, thereabouts. I can't be precise as to those dates.

Q. How long did you serve in that capacity?

A. Until the end of 1998, I believe.

Q. Then you stepped down from the board of the Tobacco Institute at that time or what?

A. Well, that was concomitant with the dissolution proceedings of the board, so the concurrence of those dates, I am not positive about.

Q. Any other positions in any entity

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related to tobacco?

A. Not that I can recall. I may have been -- no, I don't think so. I may have been a member of the board of directors of one of the tobacco-related groups to the Tobacco Institute that had growers and I can't remember the name of it.

Q. Do you have a resume or a CV that you brought with you today?

A. Counsel has it.

MR. BSCHORR: Could he have a copy of that, please.

Thank you.

MR. BSCHORR: Why don't we mark this as Stevens Exhibit 1. This is the resume of Mr. Stevens.

(Stevens Exhibit 1, resume of Arthur J. Stevens, marked for identification, as of this date.)

Q. Now, in addition to serving as a director of the CTR, did you serve in any other capacity with respect to that organization?

A. At -- for some period towards the end of my tenure, I was chairman of their compensation

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committee, I think, and to the extent that the CTR had -- to the extent that the CTR board of directors had an executive committee, I was probably on that executive committee.

Q. Would you have been on that executive committee throughout your tenure as director or just some portion of the time?

A. I think some portion of it. I am not remembering precisely the corporate structure.

Q. You don't list any directorships on your resume with respect to CTR. Is there a reason for that?

A. No.

Q. Just didn't do it?

A. Just didn't do it. I believe it indicates that I was active in the Tobacco Institute as the liaison for the company in the Lorillard listing, but, no, I have not listed separate directorships.

Q. The reference you are making is to the statement "I acted as principal liaison to the industry's most important trade association"?

A. Correct.

Q. But you did not include any reference to

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CTR?

A. I did not.

Q. Were you also a member of the, something called the Committee of Counsel or Committee of General Counsel?

A. Yes.

Q. What was that?

A. The Committee of Counsel was a committee of the industry lawyers. The membership consisted primarily of the generals counsel of the respective tobacco companies who were members of the institute. It served as, among other things, as an advisory liaison to the Tobacco Institute.

Q. Did that committee have any relationship to any activities of the CTR?

A. Not to my knowledge.

Q. Now, if you could just briefly describe during the years from 1969 to 1999, the basic chain of command of Lorillard as to who you reported to over those years.

A. Well, I guess it would be easier for me if I did it in reverse chronological.

Q. That would be fine. Whatever is easier for you.

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A. In the last years of my tenure at Lorillard, I reported to Alex Spears, who was and is chairman of the board.

Q. He became chairman of the board when, approximately?

A. I think in about in 1989 or '90.

Q. Prior to that, what position had he held in the company?

A. Various positions, but his most immediate position -- and I haven't memorized his curriculum vitae -- he was, perhaps at one point he was chief executive officer. He had been for many years the senior vice president of research and development. He was director of operations.

In 19 --

Q. Excuse me, his background, I take it, educationally was what?

A. I understand him to be a tobacco chemist.

Q. Thank you. Okay, go ahead. I am sorry.

A. From 1989 back however many years, Andrew Tisch was chairman of the board of Lorillard Tobacco Company and I reported to him.

Q. And he was the chairman in 1969 when you

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joined?

A. Oh, no. He didn't become -- maybe I have got this wrong. Let me -- I don't know when Andrew came on. Perhaps Andrew came on in 1989 and served until '94. I think that's probably more correct.

Q. So, then, Mr. Spears would have come on around '94?

A. In the reverse order -- and I don't know the years, sir -- were Dr. Spears; prior to him, I reported to Mr. Tisch. In each instance, I am reporting to the senior executive at Lorillard, whether that person's title at any particular time was chairman or chief executive officer or chief operating officer.

Anyway, to repeat in reverse order, it was Spears, Andrew Tisch, prior to Andrew Tisch, I reported to J. Robert Ave, A-v-e, and prior to Mr. Ave, I reported to Curtis Judge, all of whom were the senior executives of Lorillard.

Q. And Curtis Judge, as you recall it, was the senior executive, the chief executive at the time you joined the company in 1969?

A. No. He came with the company 14 months

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after I did.

Q. So there was actually someone else who was chief executive for those first 14 months?

A. Thank you.

Q. Who was that?

A. Manuel Yellen.

Q. Am I correct that you had office space on the same floor or reasonably adjacent to the chief executive?

A. In close proximity.

Q. Would it be fair to say that you had regular contact with him?

A. Yes.

Q. Would that be true of all of the chief executives over the period of time?

A. Yes.

Q. How large was your staff over these years in the general counsel's office? Were there other lawyers -- let me ask it that way -- that were on the staff?

A. From time to time, yes.

Q. Were there times when there were not and you were the only lawyer?

A. For a brief period of time, from

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approximately March of '69 until approximately, I think, sometime mid-'70 or '71. For many years, there was only one other lawyer. Then there were two and then three. The department was never larger than six or seven, including myself.

Q. A man by the name of Cherry, was he one of your lawyers?

A. He was.

Q. Is he still there?

A. No, he is not.

Q. When did he leave?

A. In approximately, as I recall, sometime in the spring or summer of 1996.

Q. How long had he been a lawyer at Lorillard prior to that?

A. Something in excess of 15 years.

Q. Now, if you were not able to make one of the meetings of the CTR board of directors, would you send someone in your place to represent Lorillard?

A. I may have. I don't specifically recall having done so.

Q. Did you have any practice with regard to that, where you could not make a meeting relative

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to an engagement you had undertaken, that you would send someone else?

A. No specific practice. Ad hoc.

Q. Would that also be true of the Committee of Counsel?

A. Yes. Although -- yes.

Q. How often did the board of directors of the CTR meet?

A. I think twice yearly.

Q. Would there be communications among the directors in the interim, other than those two meetings?

A. Among the directors?

Q. Yes.

A. Rarely.

Q. In other words, would there be any business transacted among the directors, other than at those two meetings?

A. The only business between and among the directors other than at the meetings, of which I am aware, was such contacts as I would make with them from time to time during my tenure as chairman of the compensation committee, and that would be a phone call or a memo with respect to, generally,

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compensation.

Q. How about the Committee of Counsel, how often would that meet?

A. It varied over the years. I would say in the 28 or 29 years, from an average of four times a year to every other month. Up until about 1998, they were meeting every month or every other month.

Q. Since then it was less or more?

A. It seems to me it was a little less in 1998.

Q. So back -- when did you first -- and I may have asked you this, and I apologize -- when did you first join the Committee of Counsel, when you became general counsel of Lorillard, or was there not such a committee at that point?

A. Which question would you like me to answer?

Q. Either one.

A. There was such a committee at that point.

Q. Okay.

A. My recollection, best recollection, if you will forgive me, 30 years --

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Q. Sure.

A. -- was that for a period following the beginning of my tenure and up until the beginning, I think, of 1971, Lorillard was not then a member of the Tobacco Institute, but I was invited to and sat in on the meetings of the Committee of Counsel almost from the time I arrived in March of '69, probably April or May of '69.

Q. It's your recollection and understanding that the Committee of Counsel was a part of the Tobacco Institute?

A. Well, as I recall, according to the bylaws, they had a few committees that were advisory and liaison, and the Committee of Counsel was one. I believe that was its derivation.

Q. Were there other liaison committees of the Tobacco Institute?

A. Yes.

Q. What were they?

A. From time to time, they varied, it depended upon the needs of the industry, the institute communications committee, state activities policy committee, perhaps a public relations committee at one time, and others, some

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of which I am sure I don't remember.

Q. Did you serve on any of those committees?

A. I think at one time, for a very brief period of time, in order to fill a vacancy, I may have served on the communications committee, and I was on the state activities policy committee for a while.

Q. With respect to the activities of the Tobacco Institute, did there come a point in time when the Tobacco Institute began to have any consideration or give any consideration to activities relative to the insurance industry?

A. Yes.

Q. When do you recall that first occurring?

A. I don't think I can be precise with respect to the dates, but I would say sometime in the mid or third quarter of the seventies, '76 or '78, around there.

Q. Let me ask you this, sir.

A. Perhaps a little earlier, but I can't be precise.

Q. Let me ask you this: In connection with your coming here today, did you do anything to

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prepare for this deposition?

A. I reviewed documents and met with counsel, yes.

Q. What kind of documents did you review?

A. A variety of documents, I think largely documents that had been produced to you in connection with the deposition notice.

Q. What else did you do to prepare?

A. I met with counsel to review those documents.

Q. When did you meet with counsel?

A. I met with him yesterday, the day before, and I met with him one day earlier in the month.

Q. Approximately how much time would you say you spent with counsel preparing?

A. Hours?

Q. That's a good measure.

A. Five and a half one day, six another day, six the third.

Q. So, in other words, you did have the opportunity to review various documents that your counsel showed you; is that right?

A. I did.

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Q. Do you recall reviewing any documents relative to any activities with respect to the insurance industry?

A. I do.

Q. Your best recollection, sitting here, is that sometime towards the last quarter of the seventies, there would have been some activity with respect to the insurance industry, correct?

A. I think my answer to that question was in response to the Tobacco Institute.

Q. That's right, the Tobacco Institute. I am sorry, that's what I meant.

A. I believe so.

Q. All right. Now, when the Tobacco Institute undertakes an activity, would it also involve the various tobacco companies themselves in that activity?

A. Sometimes.

Q. Did it, in the case of insurance?

A. Yes.

Q. What do you recall was the situation that came up in the last quarter of the seventies relative to insurance?

A. I believe that it may have been the

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announcement by Allstate Insurance of its intention or perhaps putting into effect its non -- I think they called it their nonsmoker premium discount program.

Q. What do you recall was the issue presented to the Tobacco Institute with regard to that fact?

A. The issue?

Q. Yes.

A. I think a general interest in the subject. I don't know that there was an issue or the issue, but generally an interest in the subject.

Q. Well, would you agree with me that the Tobacco Institute was concerned about the fact that the insurance industry might be having premium discounts for nonsmokers?

MR. LONG: Object to the form of the question.

Q. You may answer.

A. I don't know that I can respond that it was a concern. It was an interest. I don't know that I can characterize it as a concern. It may have been.

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Q. What is your definition of the difference between concern and interest?

A. Well, it probably, with respect to some subjects, they merge. With respect to some, it's a general awareness of what's going on. A concern is a thought that it may impact upon you. I don't know what Webster's or Funk & Wagnall would do with that. That's the best I can --

Q. I just want to be sure we understand the terminology here, so that we can go forward.

Did there come a time when you personally expressed any interest or took any action with respect to an interest concerning what the insurance industry was thinking about doing?

MR. LONG: Object to the form.

Q. You may answer.

A. Yes.

Q. When was that?

A. I probably -- as I recall, I was certainly involved with being aware of what the Tobacco Institute was doing with respect to Allstate. I became more personally involved, interested, when I got a request from the Tobacco Institute, perhaps in connection with the Allstate

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program or another company's program, for information that I might be of help in getting for them from a parent company's, and therefore, perhaps a sister company, CNA, which was in the life insurance business.

Q. Did there come a point in time when the Tobacco Institute, to your knowledge, ever took any action supporting the activities of the insurance industry with respect to premium discounts?

A. Supporting it?

Q. Yes.

A. No.

Q. Did there ever come a time where the Tobacco Institute took any position against or on the other side of that question?

A. I am not sure it was against. They certainly expressed interest to Allstate. I believe they challenged or questioned some of the statistical basis upon which Allstate had predicated its premium discount, though I am not an insurance maven, so I may be using some of the terms incorrectly, but generally speaking, that's my recollection.

Q. Prior to taking that position, did

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representatives of the Tobacco Institute consult with representatives of the various tobacco companies?

A. Mr. Bschorr, I can't describe the chronology. They may have. I don't know if it was prior, simultaneous, but it was contemporaneous.

Q. In other words, you were aware of their position, the Tobacco Institute's?

A. Yes.

Q. And you agreed with it?

A. Yes, sir. Well, I agreed with -- yeah, I agreed with their being interested in it, in taking the time to become cognizant of the issues and expressing a concern to Allstate with respect to whether the predicate premise, from a statistical point of view, was correct.

Q. What was your understanding, as you recall it, thinking back to that time, late seventies, what was the predicate that the insurance industry seemed to be using with respect to their premium discounts?

MR. LONG: Object to the form.

A. That one, I cannot answer.

Q. Do you recall ever being given any

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information with respect to that?

A. Well, I mean, the best I can do is characterize it is that they took issue with some of the statistical and perhaps actuarial. The reason I am hesitating to say actuarial is because I don't have the ability to distinguish between statistical and actuarial, but I do recall and I think I saw some documents which indicate that TI was suggesting to Allstate that some of their statistical conclusions were at least arguable.

MR. BSCHORR: Let me mark as Stevens Exhibit 2 a five-page document entitled "Recommendation of the American Cancer Society's National Commission for Smoking and Public Policy Regarding Lower Insurance Rates for Nonsmokers."

(Stevens Exhibit 2, five-page document entitled "Recommendation of the American Cancer Society's National Commission for Smoking and Public Policy Regarding Lower Insurance Rates for Nonsmokers," marked for identification, as of this date.)

MS. CLARK: Counsel, may I see a copy of that and if you can grant me the time,

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just to check so we can preserve our objections.

A. Five pages, did you say, Counsel?

Q. I think so. Did I miscount?

A. No, no.

Should I take the time to read this?

Q. If you will, just to familiarize yourself. I will have some questions about it.

Looking at the last page of that document, is that your signature above the name Arthur Stevens?

A. It is.

Q. Who was Mr. Charles Toti?

A. Mr. Toti was at that time a Lorillard employee.

Q. Was he in the legal department or something else?

A. He was in the marketing department.

Q. Do you recall preparing this memorandum, sir?

A. I did not, prior to yesterday, when, in reviewing documents, I looked at it.

Q. But this was one of the documents, obviously, you looked at yesterday?

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A. Yes, sir.

Q. Did that refresh your recollection that you had prepared it?

A. Very slightly.

Q. Do you recall your purpose in preparing this document?

A. I did not before yesterday.

Q. And what do you recall now?

A. I learned, as a result of the review of this document and some, I believe, related documents, that I was serving on a committee, I would describe it as an ad hoc committee, because it was a committee that apparently had short tenure of the Tobacco Institute called the social cost of insurance, something like that, and that Toti and I had taken on the responsibility of reporting to that group on, as is stated in the title, the recommendation of the American Cancer Society's National Commission for Smoking and Public Policy, et cetera.

This apparently purports to be that report. I did not remember it, and I am troubled that it has no date.

Q. The only date that seems to be there is

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the first sentence refers to a 1977 public forum.

Do you see that?

A. I see that.

Q. Would that refresh your recollection that the document would have been prepared shortly thereafter or around that time?

A. I think that's a reasonable --

Q. All right. Who was on this committee, this ad hoc committee, in addition to yourself?

A. I am sorry, I do not recall.

Q. Do you recall to whom this recommendation was sent?

A. I believe that, as a result of reviewing some documents yesterday, I reconstructed that it was given to the -- I concluded that it was probably addressed to those folks who served on that committee that I described in my testimony a few minutes ago.

Q. Does this in any way refresh your recollection that this period of time referred to in this memorandum would have been when you first got involved in issues relative to the insurance industry?

A. It seems to corroborate my earlier

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testimony it was somewhere after '75 and in the third quarter of the seventies.

Q. Do you recall, at the time you wrote this memorandum, whether Allstate had yet taken any position, or did that come a little bit later?

A. I don't recall.

Q. I take it -- just one more.

This Exhibit 2, I take it, was prepared by you and Mr. Toti in the course of your normal duties at Lorillard?

A. Yes.

Q. Let me show you what we will mark as Stevens Exhibit 3, a letter dated March 13, 1980, from, presumably from yourself to a Mr. Kornegay at the Tobacco Institute re Occidental Life.

(Stevens Exhibit 3, letter dated March 13, 1980 from Mr. Stevens to Mr. Kornegay, marked for identification, as of this date.)

Q. This appears to be a copy of a letter that was sent by you to Mr. Kornegay. Would you agree with that?

A. Yes, sir.

Q. Now, it refers to your believing it would be worth considering the desirability and

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pressing further with Occidental.

Do you see that?

A. Yes, sir.

Q. What did you have in mind there, in stating that Mr. Kornegay?

A. Mr. Bschorr, I have no current precise recollection of what I meant over 20 years ago. The best I could do would be to speculate, and I don't want to do that.

Q. You don't want to speculate and I don't want you to speculate. I take it this is another document you might have reviewed in the last few weeks?

A. Yes, sir.

Q. And your review of that, in conjunction with other documents or anything else you might have done to prepare does not refresh your recollection as to the purpose of this memo, of this letter?

A. Not precisely, no, sir.

Q. Well, never mind "not precisely." Do you recall anything about the circumstances of communications with Mr. Kornegay with respect to Occidental?

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MR. LONG: Object to the form.

A. I had a general interest on a continuing basis from 1977 with the subject of premium discounts for nonsmokers.

Q. And that interest, I take it, to the extent it exhibited itself with respect to any activity directed at the insurance industry, would have been opposed to premium discounts, correct?

A. Well, we discussed that earlier. Again, I might assume that Occidental was doing something similar to what Allstate or others had done, in that perhaps their predicate was equally questionable or problematic and I may have been urging -- and I am not sure I should say urging, because I think the letter says worth considering, so I was offering to Mr. Kornegay the possibility, but leaving to his disposition what he decided to do ultimately of providing Occidental with information.

And then, when I see references to Kastenbaum and Schaefer, that would support that because they were TI staffers, who, as I recall, had done some study work in connection with that subject.

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Q. Well, when you say in your letter, present, quote, some of the other side of the arguments, unquote, those would be arguments against premium discounts?

A. Yes, sir.

Q. Is it fair to say that throughout this period of time and considering any reaction to what the insurance industry was doing, that the Tobacco Institute and Lorillard in particular were adverse to the concept of premium reductions?

MR. LONG: Objection to the form of the question.

A. Yes.

Q. I take it any activity you did take with regard to the insurance industry was consistent with that; is that right?

MR. LONG: Object to the form of the question.

A. Yes, sir.

Are we finished with this document?

Q. Yes, we are.

You mentioned earlier that at some point you got involved with some communications with your sister company CNA?

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A. Yes, with --

Q. Is that a fair description, sister company?

A. I think for purposes of these discussions, sister would be --

Q. If you would like some other terminology, I would be happy to --

A. It was a subsidiary of the same company that owned us, so I guess you would call it a sister company. But to the extent that a sister company suggests that we had a close relationship with CNA or we were involved in their business or they with us, that is not the case, as is the case, I think, in other relationships that could be characterized as sister company.

Q. I take it the sister company that had whatever relationship --

A. Let's call it CNA, okay?

Q. Okay. CNA, that is the company that is a sister company to you; is that right?

A. I will give you that one, Mr. Bschorr.

Q. Let me mark as Stevens Exhibit 4 a letter dated November 5, 1979, presumably signed by you to Mr. Edward Noha, N-o-h-a.

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Who is Mr. Noha?

A. Mr. Noha was the chief executive officer at CNA at the time.

Q. A cc is shown to Mr. Chookazian. Who is Mr. Chookazian?

A. I believe he was either the chief financial officer or the chief executive officer. He was a very senior executive at CNA.

MR. BSCHORR: Let's have that marked as Exhibit 4, please.

(Stevens Exhibit 4, letter dated November 5, 1979 from Mr. Stevens to Mr. Noha, marked for identification, as of this date.)

Q. Can you identify that document, please.

A. It is, as you indicated, a letter from me to Ed Noha, dated November 5, 1979.

Q. What was your purpose in sending that letter to Mr. Noha?

A. May I just quickly review that?

Q. Sure.

A. Mr. Noha had requested that Lorillard be of assistance by furnishing information to CNA that might be suitable for CNA's use in considering

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requests that they were getting from agents to give them nonsmoker premium discounts.

Q. And obviously, as a sister company, you would want to comply with that request?

A. Yes.

Q. And you did comply?

A. Yes, sir.

Q. And is this a response to that?

A. It is a response to that, yes.

Q. What type of information did you provide to Mr. Noha, to CNA?

A. Mr. Bschorr, without looking at the materials that were sent, I can't be specific, but we sought assistance from the Tobacco Institute and gathered all kinds of information with respect to statistics concerning smoking and health and many of the subjects that surrounded the then so-called smoking and health controversy. We may have received from the Tobacco Institute what included information from the prior interests and activities that the TI had engaged in with respect to Allstate, but except for the enumeration set forth in this letter, which speaks for itself, I don't have any current recollection of the specifics of

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what was said.

Q. I take it in your preparation for this deposition, you did not review the enclosures or the backup documents or refresh your recollection in any way as to what they were?

A. I don't recall having reviewed the items which are described in my letter as generally speaking enclosures. I cannot say that I didn't, but I don't recall having done so.

Q. I take it from your answer a moment ago that the Tobacco Institute was a repository of various information relative to smokers' risks and things like that?

MR. LONG: Objection to the form of the question.

A. I am unable to describe the complete nature of the Tobacco Institute's data source that you describe. They certainly had information on the subject of nonsmoker premium discount by virtue of their prior interest in the Allstate and perhaps the Occidental matter, although I think the Occidental letter was after this.

Q. 1980?

A. So they had interest on that subject and

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related subjects.

Q. Well, would the Tobacco Institute have had information relative to smokers' risks, the difference between the risk of smokers in contracting disease and the risk of nonsmokers?

MR. LONG: Objection to the form of the question.

A. That could have been included in the data that they had, but I cannot sit here and tell you that they did or didn't.

Q. Do you recall, as a director of the Tobacco Institute, ever being advised that they did collect such data?

A. No.

Q. You never were told that?

A. No. You asked me in my capacity as a member of the board of directors if I was ever advised. I received vast amounts of information from the Tobacco Institute. I probably got a lot of information on this subject. What I cannot be specific about is the specifics of those statistics that you have identified.

I am really not trying to quibble with you, but I don't know. They may very well have

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been included.

Q. And all of this data that you are referring to that you would have received from the Tobacco Institute, did you keep it somewhere?

A. I suspect that anything I sent on to Mr. Noha, unless it was too copious, I probably retained copies of.

REQ MR. BSCHORR: Mr. Long, I am not saying we don't have this, but obviously, with respect to the volume of materials that are out there, I would like your cooperation with respect to items 1 and 2, and particularly item 2, the backup documentation to this letter. If it is somewhere that you know where it is and can point us in the right direction, great. If not, we would like you to look for it.

MR. LONG: I will check on it.

MR. BSCHORR: Thank you.

Q. Now, do you recall at any time having any discussions with anyone at the Tobacco Institute with respect to sending materials to the insurance industry which would be in support of a concept of premium reduction?

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A. No.

MR. LONG: Object to the form of the question.

Q. You don't recall any such discussion?

A. No.

Q. So I take it it is fair to say that the information referred to in item 2, which went to CNA in this letter, Exhibit 4, would have been information that would have supported the position of the Tobacco Institute, rather than the insurance industry, correct?

MR. LONG: Object to the form.

A. I don't know, but that's --

Q. That's a reasonable assumption, though, isn't it?

A. It may be.

Q. Well, you say it may be. Is there any reason to doubt it?

A. Again, Mr. Bschorr, we sent them a lot of information, and I don't want you to pull something out in the future and say "you misrepresented."

Q. No, I have already identified I don't have the information, so --

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A. We weren't taking a position in support of these discounts.

Q. By saying that, you were obviously taking a position against those discounts, correct?

A. All right, yes, sir.

Q. You will agree with me, okay.

You say in the second page of the letter -- this is the, actually third paragraph last sentence, "At that time I turned for help to Dennis Chookazian, who, in turn, put the Tobacco Institute in touch with Steve Lewis of CNA."

Do you see that?

A. Yes.

Q. What would Mr. Chookazian, who was at CNA, be doing putting the Tobacco Institute in touch with Mr. Lewis? Do you have any understanding of what was going on there?

A. Well, I think I do. First of all, Chookazian and Lewis were both at CNA.

Q. Correct.

A. In addition to the CNA folks at this time asking us for information from the Tobacco Institute, Mr. Noha was apparently unaware that earlier on the TI had asked for some information

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from CNA through me. So I was letting Chookazian and others know that the loop was now completed, that we were giving information from the TI to CNA and we were giving information to CNA from TI, and I just wanted Chookazian to know that. I believe that's how it parses.

Q. I don't know. I am just trying to sort that out.

The sentence says, "At that time, I" -- and I take it the "I" would refer to you, sir; is that right?

A. Yes, sir.

Q. -- "I turned for help to Dennis Chookazian."

Dennis Chookazian is at CNA, correct?

A. Correct.

Q. And the letter goes on to say, "who," and that refers to Mr. Chookazian?

A. Yes.

Q. -- "who, in turn, put the Tobacco Institute in touch with Steve Lewis."

So if I am reading that correctly, and correct me if I am wrong, it was Mr. Chookazian contacting the Tobacco Institute to put them in

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touch with Mr. Lewis, correct?

A. Let me read it again, okay?

Oh, okay. The Tobacco Institute was asking me for help for information from CNA to deal with their interest in the Allstate matter. I got in touch with Dennis Chookazian and asked him for help. He got in touch with the Tobacco Institute at my request and said, "Do you want help from CNA? The guy you ought to talk with here at CNA is Steve Lewis." So he served as a conduit just to put the communicators together.

Q. So it is your testimony, sitting here today, as far as you can recall it, that Mr. Chookazian was not talking to the Tobacco Institute?

MR. LONG: Objection to the form of the question. Mischaracterizes his testimony.

A. Mr. Bschorr, I really don't know -- I know that the TI and CNA were put in contact with one another. I facilitated that contact. I can't tell you exactly who the parties were, who picked up the phone and called who.

Q. I take it all of these letters we are looking at, you prepared in the normal course of

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your business?

MR. LONG: Objection to the form of the question.

A. Yes, sir.

Q. In what capacity is it -- or let me ask you this: You have on your letter and you indicated earlier you were both senior vice president and general counsel. Can you describe for me the different duties associated with both of those positions?

A. They all related to my principal role as general counsel. The senior title was a title with respect to seniority and relative position in the company.

Q. Did you consider yourself a senior executive of Lorillard?

A. Yes.

Q. And as such, did you have any responsibilities in the business area?

A. Not in the business area in terms of marketing or sales or research or any of the things that dealt with the manufacturing and distribution or sale of product. I had additional responsibilities that related to external affairs,

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governmental relations, public relations, without having that title, but that was part of my function.

Q. Any other functions that would be in the business area?

A. Not that I can think of.

Q. Let me mark as Stevens Exhibit 5, a December 19, 1979 letter from you -- or it's actually a memorandum, I believe, appears to you from you to Mr. Judge.

I take it in 1979, he would have been the chief executive?

A. Yes, sir.

(Stevens Exhibit 5, letter dated December 19, 1979 from Mr. Stevens to Mr. Judge, marked for identification, as of this date.)

Q. Can you identify that document, sir?

A. It's memorandum from me to Curt Judge dated December 19, 1979, and appears, from my reading of the first two paragraphs -- I have not finished reading it -- to relate to my contacts with CNA and the Tobacco Institute regarding nonsmoker premium discounts.

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Q. And this would have been in furtherance of the letter that has been marked as Exhibit 4 to Mr. Noha?

A. My assumption is it relates to that correspondence, in part, at least.

Q. Well, you say "in part."

A. What I am referring to, sir, is the earlier document is dated November 5 and this is dated December 19, so there may have been interim correspondence, because the memo of December 19th says "as you have seen some recent correspondence."

Q. Right. I did not mean to exclude the possibility of interim correspondence. In fact, I will probably show you some.

Mr. Cherry was on your staff at that time; is that right?

A. Yes, sir.

Q. Who was your outside counsel at that time?

A. You will have to be more specific, Mr. Bschorr. We --

Q. Was the firm of Shook, Hardy & Bacon one of your outside counsel at that time?

A. Yes, sir.

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Q. Did they have any involvement in any efforts with respect to the insurance industry?

MR. LONG: Object to the form of the question.

A. My recollection was refreshed yesterday in reviewing some documents in preparation for this deposition that in addition to requesting information from the Tobacco Institute to furnish to CNA, I also received information from Shook, Hardy & Bacon on the related subject.

Q. Let me show you what we will mark as --

A. Are we finished with this?

Q. Yes, sir. Just keep them there generally. We might go back to them --

A. Fair enough. I just don't want it in front of me. I am trying to focus on your question.

Q. Exhibit 6, which is a letter dated November 26, 1979 from a Mr. Shinn to Mr. Stevens.

(Stevens Exhibit 6, letter dated November 26, 1979 from Mr. Shinn to Mr. Stevens, marked for identification, as of this date.)

Q. Do you recall receiving that document?

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Take a moment to look at it.

A. I don't have a specific recollection, but it's refreshed by the document, sir. I mean, it's --

Q. I mean, sitting here today, you do recall receiving it?

A. -- it's a long time. Sir?

Q. Sitting here today, with your recollection refreshed, you have no reason to believe you did not receive it?

A. I have no reason to believe that I did not receive it.

Q. You would have received it on or about that date or shortly thereafter?

A. Sometime thereafter, sometime after November 26th.

May I glance at it, please?

Q. Sure. By all means.

I will just mark another document while you are doing that, if you don't mind.

MR. BSCHORR: Let the record reflect we will mark as Stevens Exhibit 7 one page of a letter dated November 30, 1979 to Mr. Lewis, with apologies, because I don't have the

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second page.

(Stevens Exhibit 7, one page of a letter dated November 30, 1979 to Mr. Lewis, marked for identification, as of this date.)

Q. Have you had a chance to look at that document, sir?

A. Yes.

Q. Do you recall sending that document and the attachments to this document on to CNA?

A. As a result of my review of documents yesterday, I believe I saw a document that I concluded did just that.

Q. And if I show you Exhibit 7, would that be the just first page of that document?

A. This appears to be a transmittal to Mr. Lewis of the materials contained with Mr. Shinn's letter of November 26th.

Q. I don't seem to have a signature or the second page, if there is one. Is there any reason to believe that this is not a letter you would have sent to Mr. Lewis?

A. No, sir, and it may very well have been a one-page letter with, for some reason, no signature. I can't explain that. I mean, I call

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your attention to the last paragraph, which seems to be a conclusory paragraph.

Q. Absolutely. I would either expect a signature or a "very truly yours" or something to be there, but maybe it wasn't.

A. That wouldn't be unusual. It appears to be the case.

Q. I take it you had a working relationship with Mr. Lewis, that you knew him over the years?

MR. LONG: I object to the form of the question.

A. The answer to your first question is no, I did not have a working relationship with him. I don't think I ever met Steve Lewis and I probably talked with him on the phone a half dozen times around this subject.

Q. Did you have any further communications with him after this letter that you can recall, sitting here today?

A. Not without looking at such additional documents as might refresh my recollection.

I can't say that I did or didn't.

Q. What was the conclusion, if any, that CNA took with respect to premium discounts?

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A. At some point, they finally adopted and put into effect a nonsmoker premium discount.

Q. And that was on what lines of their business?

A. I hate to say I am not sure I know. I think it was life insurance, but I don't know whether it extended to the casualty business. I don't think it did.

MR. BSCHORR: Let me mark as Stevens Exhibit 8, a collection of documents, all appear to relate to each other, totalling five pages, under a cover for Mr. Stevens of February 18, 1981, to Mr. Barry Hirsch.

(Stevens Exhibit 8, cover letter dated February 18, 1981 from Mr. Stevens to Mr. Hirsch with attached documents, marked for identification, as of this date.)

Q. Who is Mr. Hirsch, first of all?

A. Mr. Hirsch is the senior vice president and general counsel of Loew's Corporation.

Q. That is the parent company of the two sister companies we were talking about before?

A. Yes.

Q. Is this a document and a set of

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materials you sent to Mr. Hirsch on or about February 18, 1981?

A. It appears to be.

Q. Did you prepare, yourself, the attachments to these, to the cover letter?

A. I don't know whether I prepared them alone or whether I was assisted. I just do not recall that. I looked at these documents yesterday and I couldn't recall whether I prepared them, whether I participated in the drafting of them, so I can't answer your question precisely.

Q. Is it fair to say that you would have had the responsibility for either preparing them or having someone under your direction prepare them?

A. Yes. I am not suggesting it was somebody under my direction. It was either me or, in company with Bill Courtney at CNA, but as best I can recall, I think I prepared these, but --

Q. And your purpose in preparing the attachments was what, particularly the last three pages of Exhibit 8?

A. I would have to reread this, sir.

MR. LONG: When you ask his purpose, are you asking if he did it in response to a

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request or the reason?

MR. BSCHORR: The reason why he sent it.

MR. LONG: Arthur, you know better than I whether the reason you sent it is going to involve something that's getting into a privileged area.

THE WITNESS: I believe it does.

MR. LONG: May I have just a minute to check with the witness, because I may have to make a privilege objection on this.

MR. BSCHORR: Obviously, I never stop anybody from checking on privilege, but I do note that this material was sent to CNA, it wasn't internal, it was sent to CNA and to Loew's.

MR. LONG: Oh, it did. I assume you have also seen the ruling by Magistrate Gold in Falise in which he said communications between related corporations was not a waiver of any privilege.

MR. BSCHORR: That's why I said to you, if you wish to consult with him, you may.

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MR. LONG: All right. We will take a minute.

THE VIDEOGRAPHER: The time is 10:38 a.m. and we are going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 10:45 a.m. We are back on the record.

BY MR. BSCHORR:

DIR Q. Mr. Stevens, my question was what was your purpose in sending Mr. Hirsch these materials, Exhibit 8.

MR. LONG: I am going to have to object to the question as phrased on the grounds of privilege and work product and instruct the witness not to answer.

MR. BSCHORR: What is the work product objection based on?

MR. LONG: Work product and privilege objections are based upon the fact that these, the response may, they will go into information concerning litigation, pending litigation, litigation risks, things of that nature.

MR. BSCHORR: My question is specific.

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What is the work product objection, not what is the combined privilege work product.

MR. LONG: Work product would be any thoughts of counsel concerning the relationship between these issues and litigation risks.

MR. BSCHORR: Were there any litigations with the insurance industry over these issues at that time?

MR. LONG: With the insurance industry?

MR. BSCHORR: Yes. Or any segment thereof.

MR. LONG: I don't think so.

MR. BSCHORR: Nor do I.

MR. LONG: Then we agree.

MR. BSCHORR: Good. What is the litigation you are referring to as the predicate for the work product?

MR. LONG: General product liability cases pending in the industry.

MR. BSCHORR: So it is your position that activities with CNA as to what they should say publicly concerning premium

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discount is somehow work product related to product liability litigation?

MR. LONG: No. It is my position that when you ask for reasons behind things and when you are talking and when you are asking a question of a general counsel of a concern such as Lorillard, that a question is brought as what other reasons could result in the disclosure, that information, we believe, could be protected by the work product doctrine and attorney-client privilege.

Q. Do you recall, Mr. Stevens, that one of your reasons in sending this material to Mr. Hirsch related to your concerns about products liability cases?

MR. LONG: You can answer that.

A. Absolutely.

Q. And did you have other concerns other than those?

A. Not unrelated to product liability litigation.

Q. So the only reason you sent these documents to Mr. Hirsch was because of product

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liability concerns?

A. I believe so, at the time, yes, sir.

Q. Did you ever have any conversations with Mr. Hirsch concerning these documents?

A. I do not recall.

Q. How about with Mr. Courtney?

A. I do not recall.

Q. Did Mr. Courtney have anything to do with the preparation of these documents?

A. As I indicated earlier, I think I was the sole draftsperson, but I am not positive of that.

Let me say, I doubt that I would have sent materials of this sort to Mr. Hirsch, Mr. Courtney, without having had some conversation with them.

Q. In other words, Mr. Courtney would have been aware of this material before it went to Mr. Hirsch, or drafts thereof?

A. I can't say precisely what he was aware of, but I would not argue with that possibility.

Q. Do you know whether the letter, which is a draft, the second page of Exhibit 8 from Mr. Hirsch to Mr. Courtney, was ever sent?

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A. I believe that in preparation for this deposition, I saw the signed copy of this, but I may be wrong.

Q. Did you have any understanding as to the reasons why Mr. Hirsch would be sending such a letter to Mr. Courtney?

MR. LONG: The same objection as before. Phrased that way, I think you may get back into the exact same issues as were raised before.

MR. BSCHORR: I am asking now for his understanding of the reasons why Mr. Hirsch sent the letter, not his reasons for doing it.

MR. LONG: I am going to object on two grounds. Number one, the question seems to call for his speculation as to what Mr. Hirsch was thinking, but, in fact, if he knew and if, in fact, it concerned the same type of work product and privilege concern as the last question, I am going to object on those two grounds, and the witness needs to tell me if he has information that's responsive, if it's the same type of

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information previously requested, then I need to object and instruct you not to answer.

Q. Other than the concern, if any, that you had with respect to products liability, did you have any other purpose in drafting these letters or statements, in the case of the last three pages?

A. No, sir.

Q. Did you prepare similar types of documents and send them to Allstate?

A. No, sir.

Q. How about Occidental?

A. No, sir.

Q. How about to State Mutual?

A. No, sir.

Q. I take it the only company that received these types of letters and statements was your sister company?

A. From Lorillard.

Q. From Lorillard.

A. Yes, sir.

Q. Do you know whether any of the three statements -- the third, fourth and fifth pages of Exhibit 8 -- were ever utilized for public

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dissemination?

A. I do not recall, so I don't know whether they were or they weren't. I have no recollection.

Q. Do you recall, yourself, ever using the one on the fifth page which is attributed for reply by you?

A. I am sorry, I do not recall.

Q. Do you believe that the statement on the fifth page of Exhibit 8 that the decision by CNA, quote, "should not be interpreted as a conclusion by CNA that there is any causal relationship between smoking and mortality" is a correct statement of CNA's position?

A. Yes, I do, and I think that's supported by the third page of this exhibit where the same sentence is included as the second sentence of the first paragraph.

Q. And that's the third page of the document that you prepared, as you recall it?

A. Yes, sir.

Q. This was not prepared by CNA, was it?

A. As I said earlier, I don't know that I was the sole draftsman, but I think I was.

Q. So if I asked you the same question with

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respect to the third page, the reply by Mr. Engel and Mr. Courtney, as to whether that statement accurately reflects CNA's position on the causal relationship between smoking and mortality, would your answer be the same?

A. So that we are clear Mr. -- and I want to be sure I am pronouncing your name --

Q. Bschorr. I realize that's a hard one.

A. No, no.

Q. I have lived with it.

A. I think what I just pointed out in answer to your question with respect to the sentence in the last portion of this exhibit, a statement for reply by Stevens, I pointed out that the same statement is on page 3, which is the Engel or Courtney draft.

Q. That's what I am referring to now.

A. Yes, sir.

Q. So my question to you is, would your answer be the same, that you believe that's an accurate reflection of CNA's position, the third page?

A. Yes, sir.

Q. Do you have any information as to

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whether or not CNA had developed any statistics or actuarial data which would show that there was a relationship between smoking and mortality?

MR. LONG: Object to the form of the question.

A. I do not know.

MR. BSCHORR: What is the basis for the objection?

MR. LONG: There are about two or three conclusions in there.

MR. BSCHORR: Can we have it read back, please?

(Record read.)

MR. LONG: Relationship, you mean just any relationship, causal, epidemiology -- I mean, there are different -- that is the basis of the objection.

Q. Mr. Stevens, you used the word "causal relationship" a number of times in Exhibit 8, did you not?

A. I did.

Q. What did you mean by those words?

A. Whether smoke -- I can't think of another word for causal. Whether smoking causes

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mortality, whether there is a relationship between smoking and mortality which suggests that smoking results in mortality. The best synonym I can come up with is result. Causal means cause.

Q. So your use of those words, as you understood them, as you used them in Exhibit 8, okay?

A. Yes, sir.

Q. Put that focus in your mind. Let's go back to my question now.

MR. BSCHORR: Can I have the question read back?

(Record read.)

A. I don't know what was in CNA's files. I prepared this statement. I have no indication that they rejected it, but I don't know what was in their files.

Q. So, in other words, I take it in this discussion with CNA, you did not find out what information they might have had that might have led them to a premium reduction for smokers -- for nonsmokers?

MR. LONG: Objection to the form.

A. That's correct.

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Q. In your letter draft from Mr. Hirsch to Mr. Courtney, the second page, you refer to, in the first paragraph, the concept "statistical associations."

Do you see that?

A. Yes, sir.

Q. And in the second paragraph, you refer to "causative relationships."

First of all, can I have an understanding that your use of the word "causative" is the same as your use of the word "causal"?

A. Yes, sir.

MR. LONG: Which page are we on?

MR. BSCHORR: Second.

Q. What was your understanding of the differences, if any, between the statistical association between smoking and mortality and the, quote, "causative relationship between smoking and mortality," as you used it in this memorandum or this draft?

A. There were statistics at the time that showed an association between smoking and mortality, smoking and disease. There was at that time no final dispositive determination that

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smoking causes disease or mortality.

Q. Do you believe that is the state of the situation as we sit here today as well?

A. Largely, yes. I think there is a statistical association between smoking and disease and I think that the public health authorities and large segments of the medical and scientific community have accepted that and my understanding is that Lorillard has no debate with that position, at least in public forums. I think there is still probably a -- there is room for the argument that there's been no dispositive scientific determination that cigarette smoking causes certain illnesses.

Q. With respect to the statistical side, did there come a point in time --

MR. BSCHORR: Strike that.

Q. With respect to the statistical side, is it your testimony that in 1981, when this draft was done, that Lorillard had a position on statistical association similar to what it is today?

MR. LONG: Object to the form of the question.

Q. You may answer.

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A. Yes. I think the cigarette companies have recognized -- Lorillard has recognized for some time that there is a statistical association.

Q. And that would go back to 1981?

A. I believe so.

Q. Would it also go back to 1969, when you joined the company?

A. There was certainly a statistical body of knowledge in 1969, when I joined the company, to that effect, because that post-dated by at least five years the Surgeon General's report of 1965 or 1964, so, yes, I think so.

Q. Do you personally believe that there is any value in statistical association data?

A. Yes.

Q. What value do you place on it?

A. I am not sure I can answer your question, as I don't know what kind of a value scale we are using. Is there --

Q. Why don't you define what value scale you believe is appropriate.

A. No, sir, it is your question, not mine.

Q. I know. You answered yes to my question, so you obviously assumed something by it.

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A. No, I said I can't create -- I can't answer without knowing what kind of a value measure we are using.

Do I accept the premise that there are statistical associations between this event and this event? Yes.

Q. Do you believe it's appropriate that an insurance company would utilize those statistical associations for the purposes of setting a premium?

A. I am not qualified to answer that question.

Q. But you are qualified to send them data to say they shouldn't; is that correct?

MR. LONG: Object to the form of the question.

Q. You may answer.

A. No. I was qualified in my position as general counsel to send them information that I thought was necessary to the legal needs of my client.

Q. Did you ever review any information from the research department of Lorillard with respect to any associations between smoking and disease or mortality?

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A. Well, certainly over the 30 years of my tenure from time to time I would have done so. I can't be more specific than that.

Q. But presumably during the late 1970s-early 1980 period, you would have also reviewed some documentation from time to time?

A. I can't tell you, as of 1979, what I had reviewed or had not. I was aware there was a statistical association between smoking and certain diseases and mortality.

Q. I am now talking about your internal research data.

A. Your question, sir?

Q. Do you recall in the period late 1970s-early 1980s, that you would have had available to you and would have reviewed from time to time internal research data from Lorillard with respect to any relationship between smoking and disease or mortality?

A. I would have had such information available to me. I cannot tell you, by 1979, what I had reviewed or had not reviewed.

Q. Do you recall whether that information that you did have available indicated that there

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was a statistical association?

A. I don't know because I don't remember the information --

Q. Sitting here today, you just simply don't remember?

A. That's correct.

Q. But if we went through documents from the Lorillard files, we might be able to refresh your recollection on that, I take it?

A. Perhaps.

Q. Do you recall any documents from the Lorillard files relative to any positions by your medical, scientific department concerning causation between smoking and either disease --

A. A technical matter, Lorillard did not have a medical department, so --

Q. Let's take that for a moment, get that clear.

There was no medical research department at Lorillard?

A. Not to my knowledge.

Q. Not during any of the period of time that you were general counsel?

A. That's correct.

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Q. Was there any medical research that Lorillard sponsored outside of its own internal organization?

A. I don't know that I can characterize the -- any research they had conducted outside of the organization as medical. Scientific, yes. Tobacco chemistry, yes. I am not aware of medical -- I could be wrong, but I am not aware of it.

Q. In other words, you are not aware of any research that Lorillard would have sponsored -- and you understand the use of my word "sponsored," I mean paid for, funded --

A. Paid for, yes, sir.

Q. That Lorillard would have sponsored dealing with issues, whether medical or scientific, I don't care, but of the relationship of causation between smoking and disease.

A. Lorillard alone?

Q. Lorillard alone, either internally or through sponsorship, through fundings from outside sources.

A. Well, some of the research that Lorillard funded through the Council for Tobacco

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Research, I think, would fit into that category, but Lorillard didn't, to my knowledge, sponsor research with respect to product development or anything of that sort that was medical in nature, with one exception: at one point, for a brief period they were having examined the anticiliastatic effects of some material, but it didn't realize -- it didn't come to fruition, it didn't result in any outstanding results or product.

Q. This was at the CTR, this research?

A. No. That was funded solely and wholly through Lorillard.

Q. To an outside source?

A. Yes.

Q. Who was the outside source or what was the outside source?

A. I think they were two professors in Sweden, Rylander was the name of one, and his predecessor, who I cannot remember. I can't remember the name. It will come to me at some point, but I can't remember now.

Q. And this was approximately at what point in time?

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A. Sometime in the early and mid-seventies. Phenolmethyloxydiazole, I think it was.

Q. Other than that study -- and you say it never came to any definitive conclusion? Is that your recollection?

A. I don't know what conclusion it came to, but it didn't result in a product, or commercial application, perhaps is a better word.

Q. Other than that study, do you recall any other studies that were dealing with the components of cigarette smoke or nicotine as it might relate to disease?

MR. LONG: Do you mean solely funded by Lorillard or --

MR. BSCHORR: Either solely funded by Lorillard or -- I will strike solely.

Q. Either funded by Lorillard or internal at Lorillard.

A. All right. Well, let's -- I will try to break it down as best I can. I think Lorillard had some research done at the American Health Foundation prior to my coming with the company in '69 and maybe for a short time thereafter with respect to -- you said smoke -- I am sorry, what

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was the question?

Q. Components of smoke or nicotine.

A. Components, I believe so. But, I mean, as I sit here now, I don't have a complete repository of information with respect to every research project that Lorillard --

Q. No, and I appreciate that.

A. I mean, they would have research done with respect to product development and ingredients and things of that sort, but -- and they may fit in your general category of scientific. That's why I am trying to say I can't -- I am not a repository of all of that information.

We did do the kind of research you are talking about or participate in the funding of research through the Council for Tobacco Research.

Q. I am going to come to that in a little bit. Let me just stay with this, though.

Did you, at any time during this period in the late 1970s-early 1980s, ever review any medical/scientific information either that came internally from Lorillard or as a result of funding projects from Lorillard that dealt with carcinogens in smoke?

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MR. LONG: Objection to the form of the question.

A. No.

Q. Did you ever at any time up to the present ever review any documents that indicated that there are carcinogens in smoke?

A. I am hesitating because of your use of "review documents." I have read materials about carcinogens and smoke or carcinogens and cigarettes.

Q. Do you believe, sitting here today, there are carcinogens in smoke?

MR. LONG: Objection to the form of the question.

A. There may be.

Q. Well, that's equally that there may not be. So you don't know? Is that what you would like me to think?

A. Well, there may be, there may not be. I think there is some debate about that. But again, I think there are substantial statistical associations that suggest there are carcinogens in smoke.

Q. Well, what would you want me to

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understand is your belief, that you don't have a belief as to whether there's carcinogens, that you do, that it may be or maybe not? Which is it?

A. I always hesitate, sir, when I am asked a scientific or a technical question. I personally don't know that there are carcinogens in smoke. I don't have a serious doubt that there may be, but I don't know.

Q. Did you at any time in your discussions with any of the insurance companies concerning premium discounts, ever either advise them or send to them any materials that indicated there are carcinogens in smoke?

A. Well, I have had no discussions with insurance companies other than materials that I facilitated getting to CNA, and I did not discuss carcinogens or any other component of smoke with CNA.

Q. So, in other words, other than possibly some letters that we can discuss here with other insurance companies, you never had any face-to-face or telephonic communications with anyone other than CNA; is that right?

A. No, that is not true. I think there

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came a time, perhaps in the early eighties, when some people from Beneficial Life Insurance or something near that, came to Lorillard with a promotional program and that may have involved some discussions of insurance and smoking, and I don't know that it involved nonsmoker premium discount.

It seems to me, in reviewing some documents yesterday, I may have written to other insurance companies, but I don't have a specific recall. If you want to put documents in front of me that raise that issue, I would be happy to look at them.

Q. In any event, you don't recall advising them that there may be carcinogens in smoke?

A. That, I have a very specific recollection of not having done.

Q. You can put that one away and we will move on to another one.

Just to complete the circle, let me mark as Stevens Exhibit 9, an enclosure memo, presumably from you to Mr. Shinn -- and I take it Mr. Shinn is at Shook, Hardy?

A. Mr. Shinn was a partner at Shook, Hardy.

Q. -- which attaches what appears to be a

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signed copy of a letter from Mr. Hirsch to Mr. Courtney which looks like it's just like your draft, surprisingly.

MR. BSCHORR: Let's mark that as Exhibit 9.

(Stevens Exhibit 9, cover letter dated March 2, 1981 from Mr. Stevens to Mr. Shinn with attached document, marked for identification, as of this date.)

Q. Am I right on that, that it is the signed copy of the same letter which was a draft which we looked at before in Exhibit 8?

A. So it appears.

Q. So I take it Mr. Hirsch accepted your recommendation to send that letter?

A. It would seem so.

Q. Just so I understand your own system, I see at the back of that, the third page, there is a stamp that seems to say "Received" with a date and then your name.

Do you see that?

A. Yes, sir.

Q. Is that something your secretary would put on incoming mail for you?

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A. Yes, sir. My assumption is that it was on the back of this page and that for purposes of duplication for the litigation, it's on a separate page.

Q. That's my assumption as well.

Was that a standard procedure of your secretary?

A. Yes, sir.

Q. Is that true throughout the years?

A. Yes, sir.

Q. So would it be fair to say that even though a document on its face may not show a cc to you or be addressed to you, if it had that stamp on it, that would suggest you got it?

A. Yes, sir.

Q. Did you, as a matter of course, read things that came in to you that received such stamps?

A. I would hope that I read most things that came in, but I can't assure you that I read every single document that came into my office in 30 years.

Q. And certainly that was your intent, to try to do that, at least, to read those documents;

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is that right?

A. Yes.

MR. BSCHORR: Let me mark as Exhibit 10 what appears to be an internal memorandum from Mr. Stevens to Mr. Judge dated March 18, 1981.

(Stevens Exhibit 10, memorandum dated March 18, 1981 from Mr. Stevens to Mr. Judge, marked for identification, as of this date.)

Q. Can you identify that document after you review it?

A. Yes, sir. Thank you.

I have read it, sir.

Q. What was your purpose in sending that letter or that memorandum to Mr. Judge?

A. I was advising Mr. Judge as to my legal opinion as to the proposal that was put forth for Lorillard's consideration by the National Benefit Life Insurance Company.

Q. Do you recall what that proposal was from the National Benefit Life Insurance Company?

A. As a result of reading this memo and reviewing this document yesterday, National Benefit

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was proposing some sort of a marketing proposal relating to our then True cigarette, a low-tar cigarette, and some aspect of their life insurance program. Beyond that, at the moment, I don't recall the specifics, but it was a tie-in.

Q. A tie-in?

A. And it would have involved advertising of insurance, life insurance, in conjunction with True or low-tar cigarette smokers.

Q. Was the proposal from National Benefit Life to somehow have a relationship between that company and Lorillard with respect to True or was this just talking about low-tar cigarettes in general?

A. No, they were specifically relating to True cigarettes, which was, still is, a low-tar cigarette.

Q. Were they asking, as you understood it, Lorillard to join with them in whatever effort they were proposing?

A. Join with them in the sense of permitting the use of the name and the tie-in. The specifics of the business proposal in terms of the degree of Lorillard's participation or some

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economic advantage to it, I do not recall.

Q. Do you recall whether National Benefit Life was also seeking a similar type of relationship with respect to other low-tar cigarettes made by other manufacturers?

A. I learned at the time of this overture this they had, I believe, prior to approaching Lorillard, made a similar proposal to another cigarette company for another low-tar brand.

Q. Is that the reference to Philip Morris in this letter?

A. Yes, sir.

Q. Any others? Did they contact other companies? How about RJR?

A. If they did, I was not then nor am I now aware of it.

Q. You refer in the last sentence of this memorandum to something called NBLIC.

What is that?

A. National Benefit Life Insurance Company.

Q. That is the -- I see.

Do you recall going further and having discussions with the counsel for National Benefit Life?

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A. I became yesterday reminded of the fact that we had a meeting with Mr. Crohn and his counsel sometime subsequent to March 18, 1981.

Q. How long did that meeting take, do you recall?

A. No, I don't, but perhaps in a subsequent document or memorandum, there is some indication that it lasted an hour, but I don't know.

Q. What was the topic under discussion?

A. They came to make a personal pitch for this proposal.

Q. What do you recall you said in response?

A. My recollection is that Mr. Judge and I listened to their presentation and we rejected it and I explained to them as best I could, from a legal point of view, why I had objections to it and I believe I gave them this memo to take away.

Q. Did Mr. Judge state any reasons that he had for being in opposition to this from a business reason?

A. I don't recall.

Q. He just sat there and let you do the talking?

A. You would have to know Mr. Judge to know

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that that would have been impossible.

Q. I think I have already heard enough, being involved, though I never have had the pleasure of meeting him.

A. It was a pleasure.

Q. Okay.

A. I don't recall the dialogue that took place among the four of us, but I am positive Mr. Judge actively participated.

Q. Four being -- who was the fourth person?

A. I believe Mr. Crohn or NBLIC's counsel, I think a man named Bertram Harnett, was also present.

Q. Was there any discussion at that meeting concerning any of the components of a low-tar cigarette such as True?

A. Not that I recall.

Q. Was there any discussion of carcinogens?

A. Not that I recall.

Q. Any discussion of any association between smoking and disease?

A. Not that I recall, but there may very well have been. But I do not know. I don't remember the details of the conversation, of the

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meeting.

Q. I take it you did not prepare a memorandum of that meeting or notes?

A. I don't know whether I did or didn't.

MR. BSCHORR: I have never seen any, so, again, there's a lot of paper, so I always have to be cautious when I say that, Mr. Long, but if there is such, either notes or --

Q. Just let me address this to Mr. Long.

MR. BSCHORR: -- any notes or a memorandum of that meeting, if you can point me in the right direction or advise me that as far as you know, it doesn't exist, it would be much appreciated.

Would you do that for me?

MR. LONG: I will check on that. I assume, if we have it, we produced it. If we have it and did not produce, it I will tell you.

REQ MR. BSCHORR: If you could let me know on that, I would appreciate it. Sometimes, it may be on a privilege log, for all I know. I don't know.

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Stevens

You will let me know one way or the other?

MR. LONG: I will let you know. If I find that we have the document for some reason and have not produced it, which I would find very odd, I will let you know.

MR. BSCHORR: Thank you.

Q. Other than this one meeting with the National Benefit Life people that you just related, do you recall now any other discussions or meetings you had with any other representatives of insurance, of the insurance industry concerning any activity that they may be taking as it related to smoking?

A. No. But I think I testified earlier that I do not recall whether I may have written to another insurance company at one point.

Q. No, I meant, and I thought I said, any meetings or discussions.

A. As I said not that I recall.

Q. Do you recall any discussions at any time relative to any part of the insurance industry setting up anything, what we refer to as wellness programs or smoking cessation programs?

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A. I don't have a specific recall. I may have seen some documents that talked about wellness programs, but I don't have a specific -- if you want to refresh my recollection or ask me some specific questions that will refresh my recollection, I will be happy to answer, but in that general context, I do not.

Q. But obviously, in the review that you did recently to prepare, it did not refresh your recollection with respect to anything in that regard; is that right?

A. Mr. Bschorr, I can't say that. I looked at a lot of documents in the last couple of days and I don't have a photographic memory. There may have been a document to or there may have been a document with reference to wellness programs. I really don't recall.

Q. How about with respect to any communications with respect to any company -- now I am not limiting that just with respect to insurance companies -- any companies concerning activities that they might be seeking to undertake with respect to limiting smoking in the workplace, do you recall ever being involved in any discussions?

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A. Yes.

Q. What do you recall -- first, when do you first recall that being a topic of discussion?

A. I don't have a precise recollection with respect to a specific time. It would possibly have been in the late seventies when restrictions and prohibitions in various venues with respect to smoking, public and employment started to receive a lot of attention, but I cannot be more specific than that.

Q. Do you recall whether any of those activities related to insurance companies? In other words, limitations on smoking in the workplace by an insurance company.

A. For its employees or with respect to its insureds?

Q. With respect to its employees first.

MR. LONG: Limitations by the insurance company?

MR. BSCHORR: Correct.

A. I have no recollection of that activity.

Q. How about with respect to limitations concerning its enshrouds?

A. I have no recollection of that activity.

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Stevens

Q. Let me mark as Exhibit 11 a one-page handwritten document, apparently addressed to you, Mr. Stevens, dated October 23, 1979.

(Stevens Exhibit 11, handwritten document dated October 23, 1979, bearing production No. 92519670, marked for identification, as of this date.)

Q. This seems to relate to the CNA situation. Am I right on that?

A. Yes.

Q. Can you identify who sent that memo to you?

A. Curt Judge.

Q. Is that his handwriting, as far as you recall it?

A. The main body of the note and the signature are his.

Q. Now, there is some handwritten notations, both at the top and on the left-hand margin towards the bottom.

Can you identify that handwriting?

A. The top identification, K-l-o-e-p-f-e-r, I think is Curt Judge's handwriting.

Q. Who is Mr. Kloepfer?

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A. Mr. Kloepfer was a senior vice president at the Tobacco Institute.

Q. Okay, and then down on the right-hand -- I am sorry, the left-hand side, near the word "thanks," there are some words.

A. The left marginalia, if that's the word, I believe is my handwriting.

Q. It looks like something "Steve Lewis." Do you see that?

A. That's what I recognize it as.

Q. Can you recognize the word above it?

A. I cannot.

Q. Can you recognize the handwriting immediately below that?

A. Unfortunately, that scrawl is mine.

Q. Any chance that you can decipher that?

A. Not a chance, other than the first figure, which refers to paragraph 3. I use that symbol to designate paragraph, but I cannot read the rest of it.

REQ MR. BSCHORR: Mr. Long, if we could indulge you again to see if we can get a clarification of what that handwriting is, if we blow it up in some way, I am sure

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there is a way to do it. Do you think we could work that out?

MR. LONG: If I can blow it up, you can blow it up.

MR. BSCHORR: Well, I know, but I then need to have this witness identify it and I don't want to bring him back to do all of that, so I am just trying to move this thing along. If we can have an understanding that we can try to come up with an understanding of what those words are or --

MR. LONG: We will talk further with Mr. Stevens, see if he can figure out what it is.

MR. BSCHORR: Thank you. That's all I am asking.

Q. Now, this document refers to Mr. Noha quoting -- quote, "Wants ammunition to fight this."

Do you see that?

A. Yes.

Q. Was it your understanding that Mr. Noha of CNA did not want to give smokers discounts?

A. I don't have that personal knowledge.

Q. You never heard that --

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Stevens

A. Well --

Q. -- other than this document?

A. That's correct.

Q. You never heard it from Mr. Noha or Mr. Lewis?

A. I never heard that from Mr. Noha or Mr. Lewis.

Q. Or Mr. Chookazian?

A. That's correct, I never did.

Q. Mr. Judge is asking you to have TI -- which I assume is Tobacco Institute --

A. Yes, sir.

Q. -- send him any research information which will help him?

A. Yes, sir.

Q. I take it that is information that will be used by him as ammunition to fight this; is that correct?

MR. LONG: Objection to the form.

Q. You received this memo, sir. Isn't that your understanding of what was being asked of you to do?

A. I know what Mr. Judge's memo says. I took this to be a request of Mr. Judge on behalf of

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Mr. Noha, which I complied with and is referred to in earlier documents, for information to deal with the subject. The characterization "ammunition to fight this" is Mr. Judge's. I do have any way of knowing what he meant by that beyond what it says.

I gave the information to CNA in the manner I earlier testified with respect to --

Q. And you earlier testified that, as you recall it, you did not give him any information that would support premium discounts?

A. That's correct.

Q. So you did give him information that would be used as ammunition to fight this, correct?

MR. LONG: Object to the form.

A. I gave them information that would enable them to consider the subject as best as I could with respect to the wherewithal that was available to me.

Q. Did you give them information that was ammunition to fight this, yes or no?

MR. LONG: Object to the form.

A. I complied with Mr. Judge's instructions.

Q. And his instructions were to get

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information that he would have as information to fight this, am I correct?

A. That's what he says.

Q. Thank you.

MR. BSCHORR: I will mark as the next exhibit, Exhibit 12, a letter from Mr. Stevens to Mr. Robert Seiler, S-e-i-l-e-r, at Allstate Life Insurance dated October 5, 1979. That's Exhibit 12.

(Stevens Exhibit 12, letter dated October 5, 1979 from Mr. Stevens to Mr. Seiler, marked for identification, as of this date.)

Q. After taking a moment to look at that letter, do you recall that was a letter you sent to Mr. Seiler on or about October 5, 1979?

A. I am halfway reading through it, but the answer to your question is yes.

Q. Did you have any understanding, at the time that you wrote that letter, as to what was the predicate for Allstate's decision to give a nonsmoker discount?

A. Yes, I think I do. I think I did.

Q. What was that?

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Stevens

A. Well, in connection with the Tobacco Institute's activities which I described in my earlier testimony in response to your question, I believe I became aware of some of the bases on which Allstate was predicating its discount, and while I don't have a specific recollection now, I believe it may have been the statistical association and the other causation factors that we discussed earlier in this dialogue.

Q. You are aware that insurance companies in general use actuarial statistics for the purposes of setting premiums?

A. I am.

Q. And your understanding of actuarial statistics would be what?

A. Very limited.

Q. Well, tell me how limited.

A. Very limited. I --

Q. What is your understanding of how an insurance company sets premiums?

A. I am sorry, how they --

Q. Set premiums.

A. In part on, I guess, what are called actuarial tables, which are estimates, predictions

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of how long people are going to live and their life expectancy, their mortality rates, their susceptibility to intervening causes, those kinds of things, which are the application of statistics to longevity, I --

Q. Right. And you believe that those types of statistics are valid ways of setting premiums for insurance companies?

A. Well, again, I am not an insurance underwriter. I am assuming that in many instances they are valid and in some, I would assume that sometimes they are not valid.

Q. Do you have any life insurance, yourself, sir?

A. I am trying to think, in my new status.

I don't have any life insurance as such. I have a very modest death benefit under the company's pension plan, which is in the nature of life insurance. I have had life insurance in the past.

Q. That was through the company, I take it?

A. It was -- well, at various times in my life. Some of it was employment-related and others was not.

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Stevens

Q. Now you indicate in Exhibit 12, in the end of the second paragraph -- and I am going to pick up the sentence midway through; if counsel wants me to read the whole one, I will. I am quoting now.

"We do consider it regrettable that your good company finds it necessary to direct the appeal of its advertising to potential customers on the basis of an inference concerning smoking and health which we believe to be patently unjustified."

Do you see that?

A. I do.

Q. What about that inference did you understand to be patently unjustified?

A. I don't remember what the inference was, so I can't answer your question.

Q. Do you have any information, sitting here today, as to the basis for that sentence?

A. Do I have any basis today for a statement I made in October of 1979?

Q. Do you have any recollection of the reasons that you used those words in that sentence at that time?

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A. I have no current recollection.

Q. Do you believe, sitting here today, that an inference of a statistical actuarial analysis of mortality tables showing a difference between smokers and nonsmokers would be patently unjustified?

A. I don't know what the specific inference or the specific application would be. It might be or might not be. I have testified earlier that I understand the validity of statistics in certain associations, but I cannot relate that to a letter written in October of 1979.

MR. BSCHORR: Let's go off the record a moment to change the tape.

(Recess taken.)

BY MR. BSCHORR:

Q. Mr. Stevens, before the break, we were talking about Exhibit 12. Do you have that in front of you there?

A. Yes.

Q. There is a reference in there to the reactions of the Tobacco Growers Information Committee.

What was the Tobacco Growers Information

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Committee, as you understood it at the time?

A. The Tobacco Growers Information Committee, I believe, was an association in the nature of a trade association representing tobacco farmers -- whether it was flue-cured or burley or both, I don't recall -- and it was, as I recall, interested in advancing the interests of tobacco farmers with respect to the sale of domestic tobacco.

What I am not clear about at this juncture is whether it was also at that time interested in advancing and promoting the sale of domestic tobacco overseas, but it was a growers information association, just as the name implies.

Q. In your tenure at Lorillard, did you ever have occasion to deal directly with any representatives that you knew to be associated with the Tobacco Growers Information Committee?

A. I believe that from time to time I may have.

Q. How about with respect to the subject matter of this letter, do you recall any communications that you had with any representatives of the Tobacco Growers Information

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Committee?

A. I do not recall. I cannot say that I didn't, but I do not recall any.

Q. Did it ever come to your attention that any representatives of any other tobacco company ever had any communications with the Tobacco Growers Information Committee concerning the subject of this letter?

A. I do not know whether they did. I may have had information on that subject in 1979, but I have no current recollection.

Q. Now, the letter refers to a September 20, 1979 letter to Mr. Tisch. Let me mark as Exhibit 13, Stevens Exhibit 13, that letter.

(Stevens Exhibit 13, letter dated September 20, 1979 from Mr. Seiler to Mr. Tisch, marked for identification, as of this date.)

Q. Is that, in fact, the letter that you referred to in your letter, Exhibit 12?

A. I am in the process of reading it, but -- the answer is I believe so. I will just take another minute.

Q. Sure.

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Stevens

A. Yes, it is, apparently -- it appears to be the letter referred to in my letter to Mr. Seiler of the 5th.

Q. In preparing the response, Exhibit 12, did you undertake to find out what was being referred to in Exhibit 13 by way of the activity of the tobacco growers information so you could accurately respond?

A. I believe I knew.

Q. What did you know about the campaign, quote, "has spread to include Sears" unquote?

A. Without the ability to recite in detail what the Tobacco Growers Information Committee was doing, I was aware they were engaged in advertising that I had seen or letter-writing in which they were complaining about the Allstate program, and I think, in effect, trying to impact upon the corporate relationship that existed between Allstate and Sears retail.

Q. How did you understand they were going to have their activities impact on Sears?

A. Mr. Bschorr, I don't remember the details, but I think they were suggesting something in the nature of a boycott or a reduction in

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purchases by their membership as customers of Sears or perhaps of Allstate or both.

Q. Now, you indicate in your letter, Exhibit 12, that Lorillard, quote, "cannot honor the request set forth in your letter to Mr. Tisch to convince the committee to cease their actions against Allstate and Sears."

Do you see that?

A. I do.

Q. What was the basis for why you could not honor that request?

A. Well, I point out that that sentence begins with the word "accordingly," which suggests to me at the time I wrote it, it followed in logical progression after the previous sentence, in which I said, if I may quote, "Lorillard is not in a position to control or in any way influence the actions of the Tobacco Growers Information Committee with respect to that committee's reaction," et cetera, et cetera.

So I was saying we don't control the Tobacco Growers Information Committee and I can't do what you have asked us to do.

Q. Did you ever have any further

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communications with Mr. Seiler or anyone else at Allstate concerning this matter?

A. If so, I do not recall.

Q. Do you know whether or not the Tobacco Growers Information Committee continued along with its advertising campaign and possible boycott against Sears?

A. I do not recall that, sir. I don't know whether they did or didn't.

Q. Do you know whether Allstate continued with its activities of premium discounts for nonsmokers?

A. I believe they did.

Q. Do you recall whether Allstate, in connection with its premium discount for nonsmokers, ever sent any letters out indicating that they were doing so for reasons other than a causal relationship between smoking and disease?

I am harking back, obviously, to the words in your drafts to CNA.

A. It sounded familiar. It seems to me I have seen letters from Allstate in which they deal with their activities and perhaps the basis on which they offered the premium, but I don't have a

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precise recollection. If you want to show me something, I will be happy to look at it.

Yeah, I think Allstate responded to some of its critics.

Q. Sitting here today, do you have any information to suggest that a statistical actuarial difference between smokers and nonsmokers and disease exists?

MR. LONG: Would you read that back?

(Record read.)

MR. LONG: Objection to the form of the question.

Q. Do you understand the question?

A. I think I do, but I don't think I have the qualifications to answer the question.

Q. Well, my only question is whether you have any information, sitting here today, so I think you are qualified to talk about what information you have. I hope you are.

A. As compared with knowledge?

Q. If information imparts or includes knowledge, that's fine. I would hope it does.

A. May I hear the question again?

Q. Let me ask it again.

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Stevens

Sitting here today, do you have any information to indicate -- I am going to change the question slightly, so listen carefully.

MR. LONG: I am.

Q. -- to indicate whether or not a statistical relationship or an actuarial relationship between smoking and disease or smoking and mortality is valid?

MR. LONG: Object to the form. Compound.

Go ahead.

MR. BSCHORR: I run my risk on that one.

A. I don't know whether such statistical or actuarial association is valid. I don't feel competent to make that judgment.

Q. Have you ever seen any statistical analysis that suggests that there is, in fact, no difference between smokers and nonsmokers and their relationship to disease?

A. I don't know whether I have ever seen such information. I may have.

Q. But sitting here today, you can't recall any specifically?

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A. No, sir.

Q. You indicated earlier, when we were talking about the difference between statistics and causal relationship, that you made a difference, a distinction between the two, correct?

A. Yes, sir.

Q. Let's talk about the causal side.

Do you believe today that there is a causal relationship between smoking and disease?

A. I am aware that the company and other companies are of the position and the view, and I embrace that, that cigarette smoking is a risk factor for disease, and I have no argument with the public health and the medical and other authorities taking such a position.

Q. Do you agree with that position?

A. I agree with that position as a matter of public policy and not taking issue in the public debate and not taking a position that is adverse to it other than such legal proceedings as is appropriate.

I am never happy when a witness says I am not a scientist or a doctor, but from a personal point of view, I don't know whether cigarette

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smoking causes disease. It may and it may not. But I can't sit, as a matter of scientific certainty, and say that it does, nor can I say that it doesn't.

Q. But as I understand it, your company, as well as other tobacco companies, have recently in their Websites and other public disclosures, have taken the position that smoking is a risk factor for cancer, correct?

A. I understand that to be the case. I have not examined the Websites, but I understand that to be the case.

Q. And when do you recall that Lorillard, as a corporation, first took that position, that smoking is a risk factor for cancer or for disease?

A. I don't have a clear cleavage. I mean, I think Lorillard has acknowledged for some time that it's a risk factor.

Q. Would they have been acknowledging that, to your recollection, in 1969, when you joined the company?

A. I'm not aware that, other than in legal proceedings, Lorillard has not been a company that has articulated its position on these issues

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publicly. I mean, we have not been a company that has been outspoken in its advocacy of any of these issues, so I -- I am hard pressed to answer the question with respect to a cleavage.

I think there has been acknowledgment for some time that smoking is a risk factor. I can't give you a precise date or even an approximation of a period of time when they may have taken a different position.

Q. In your mind, is the -- I am sorry, did you finish?

A. I did.

Q. In your mind, is there a difference between saying that smoking is a risk factor in disease and saying that smoking causes disease?

A. Yes.

Q. What is that difference?

A. I think one is more conclusory and more positive than the other.

Q. Which is which?

A. To say that it causes is certainly more positive and more conclusory, more definitive. To say that it is a risk factor says that it may be.

Q. Do you know whether any tobacco company

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has a position today that smoking causes cancer, as you just used those words?

A. I do not know what every company's position is on those issues. That's a luxury that I now enjoy.

Q. A couple of times in your preceding answers, you referred to litigation or litigation position.

A. Yes, sir.

Q. And I at least -- and correct me if I am wrong -- but I understood you to say that Lorillard may take a different position in the public health arena versus in litigation, on the issue of whether it is a risk factor.

A. I am not saying they may or they have. I am saying that it seems to me in different fora, forum, I have said that I understand that the company is not interested in -- it does not debate in the public forum the issue of whether cigarette smoking may be a risk factor. I am not privy at the moment as to what their position is or may be in litigation with respect to any distinction between risk factor may, does or causes.

Q. I take it up until the time you retired

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from Lorillard, you were aware of those positions taken in litigation?

A. That's correct.

Q. And what was that position?

A. I think prior to my retirement or my last year of activity, I think the company was in some instances indicating that cigarettes may be a risk factor.

Q. Isn't it true that throughout the 1960s, seventies and eighties, Lorillard consistently took a position in litigation that smoking is not a risk factor?

A. Yes.

Q. And that smoking is not a risk factor of disease?

You just answered that yes. I take it, if I asked you the same question during the 1960s, seventies and 1980s, isn't it correct that Lorillard consistently took a position in litigation that smoking does not cause disease, would you -- is that correct?

A. I believe that was our position.

Q. Is it not also correct that during the sixties, seventies and eighties, Lorillard took the

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position in litigation that smoking does not result in a premature death?

A. I can't be as precise with respect to that issue. I do not know.

Q. I am now going to the statistical analysis of smoking and mortality between smokers and nonsmokers.

Do you recall whether Lorillard, during the sixties, seventies and eighties, took any position in litigation other than that any statistical analysis of the difference between smokers and nonsmokers was not correct?

MR. LONG: Object to the form.

A. My recollection is that Lorillard in litigation did not concede that statistics demonstrated cause.

Q. My question is whether or not Lorillard took any position other than that statistics, such as the difference between smoking and nonsmokers and disease, was not a valid measure.

A. I am sorry, I am having trouble getting my hand around double negatives, so --

Q. All right. Let's go back and be very simple.

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Stevens

During the sixties, seventies and eighties, did Lorillard take a position with respect to the validity of any form of statistics between smokers and nonsmokers and disease?

A. Any form of validity? I don't know. I am sure that from time to time in the period that you mentioned in its litigation, Lorillard challenged some statistical associations.

Q. And indeed, did they not uniformly challenge such statistical analysis whenever presented in litigation during the sixties, seventies and eighties?

MR. LONG: Objection to the form of the question.

A. I hesitate to use the word "uniformly" because we had many, many, many cases during that time and I am certainly not in a position to sit here and say what our defensive position was with respect to each and every allegation in each and every lawsuit.

Q. Did Lorillard, through the sixties, seventies and eighties, ever take any position with respect to whether smoking was addictive?

MR. LONG: Position in court or

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Stevens

position --

Q. In court.

MR. BSCHORR: Thank you.

A. Yes.

Q. What was that position?

A. Lorillard challenged the assertion that under any and all circumstances cigarettes were addictive.

Q. Did Lorillard, based on any of the information that it had developed itself, either internally or as a result of research it sponsored, ever be advised that smoking was addictive?

MR. LONG: Would you read that back?

(Record read.)

MR. LONG: Object to the form.

A. Without indicating whether it was on the basis of internal information or external, Lorillard was certainly aware that there were arguments to suggest that cigarette smoking was addictive.

Q. My question was not whether there were arguments. My question was, based on -- let's take it step by step.

Based on any internal research at

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Lorillard, did it ever come to your attention that any of that research indicated that smoking was addictive?

A. Not that I am aware of.

Q. How about with respect to research that was sponsored by Lorillard, done outside of Lorillard?

Same answer?

MR. LONG: Same question?

MR. BSCHORR: Same question, same answer.

I don't know, maybe not the same answer.

A. There may have been, but not that I am aware of.

Q. So it's your position, sitting here today, that whenever you went into court and challenged -- your word -- challenged the issue or the argument that smoking was addictive, you did so without any information to the contrary from your own files, correct?

MR. LONG: Object to the form.

A. I am not -- Mr. Bschorr, I am not comfortable trying to either generalize or be

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specific about what our defenses were in every lawsuit and what they were predicated upon. I just, I am -- I don't think that's -- I don't think it is reasonable to expect me to have that kind of detailed information.

I tried to answer you earlier by saying that Lorillard was certainly aware that there was and is literature suggesting that cigarette smoking is addictive, and it was aware of that during the course of its defense of lawsuits in the three decades that you describe. It defended its lawsuits where addiction was asserted -- and it wasn't a very common cause of action in the sixties and seventies -- it defended it on the basis of whatever evidence was available to it with respect to the particular plaintiff, and, yes, I am sure it suggested or defended or challenged or asserted that with respect to particular plaintiffs, cigarette smoking was not addictive. I can't --

Q. Did there come a point in time when Lorillard's position in litigation with respect to whether smoking was addictive changed?

A. I can't answer that question precisely. I don't know. I believe that -- I am not positive.

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Stevens

I think, consistent with my testimony earlier with respect to causation of disease, I think its position with respect to addiction is similar. I think it acknowledges that cigarette smoking may be addictive and it may not be.

Q. I thought you indicated before, and we can go back and look, that sitting here today, you would agree that smoking is addictive.

A. That's a different question.

Q. I understand that.

You agree with that today?

MR. LONG: Agree with --

MR. BSCHORR: That smoking is addictive.

A. I said to you that it may be or may not be. I think that was my testimony.

Q. Are you aware that a gentleman from Philip Morris, Steven Parrish, has stated categorically recently that smoking is addictive?

A. I have read the press release on that.

Q. Would you agree with his statement in that regard?

MR. LONG: Object to the form.

A. I do not agree with it completely in

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that it is an unequivocal statement, and as I testified a few minutes ago, I think that it may be, it may not be, and I think it depends in part sometimes upon the individual.

Q. Would you think that that -- is it your understanding that that position, that it may be or may not be, is a position that Lorillard has consistently held over the years, going back to 1969, when you joined the company?

A. Again, I hesitate to characterize or try and describe with accuracy what our position has been in every case, but I -- I don't know.

Q. How about public statements concerning addiction? What has Lorillard's position been over the years on that?

MR. LONG: Objection to the form.

A. You would have to assist me by showing me public statements or suggesting a time as to when we may have made them. I will try and parse it out. In litigation, we never made a public statement. I don't remember the Tobacco Institute, in any of its industry advertising with respect to any issues that were under consideration for legislative purposes dealing with addiction, and

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therefore, I don't think that any ads that we signed onto with respect to those dealt with addiction. So I don't think we made any public statements with respect to addiction, but I could be mistaken.

Q. Surely you remember that Mr. Tisch testified in Congress in 1994, don't you?

A. I do.

Q. And you recall the subject was addiction?

A. I do.

Q. Do you recall what he said?

A. He said that in his opinion, cigarette smoking was not addictive.

Q. And did you have -- was not addictive. Not may or may not be, was not addictive?

A. I believe he said it was not addictive.

Q. Did you work with Mr. Tisch in preparing him for his testimony?

A. I did.

Q. Did you agree with the statement that he made?

A. Yes.

Q. But you have just said to me now that

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your position over the years is that it may be or may not be?

A. No. I have said to you my position now is that.

Q. Now, in 19 -- let's find out.

In 1994, was your position similar to Mr. Tisch's, that it did not?

A. Yes, yes.

Q. When did it change?

A. Sometime in the last number of years.

Q. Let's be a little more specific. Did it change in 1995?

A. I don't know.

Q. How about 1996?

A. I can't give you a precise date.

Q. Did it change in connection with any litigation?

A. Not to my knowledge.

Q. Did it change in connection with the release of any documents from the files of Lorillard in the mid-1990s?

A. Not that I know of.

Q. You just changed it automatically without any cause?

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A. No, I didn't say that.

Q. What is the cause?

A. I don't have a specific cause. I am aware that the public health authorities and the medical and the scientific consensus with respect to the issue is considerable, and therefore, I have become of the view that it may be. I still think very strongly that for some people it is not.

Q. You are aware that in 1988, the Surgeon General issued a report in which it said that smoking was addictive?

A. I am.

Q. What information of scientific or medical content has come along since 1988 to change your mind, from 1994 to today?

A. I can't -- I can't identify or quantify specific information that's come to my attention.

Q. In 1988, did you disagree with the Surgeon General's report that smoking is addictive?

A. I did.

Q. Now, you were general counsel of Lorillard in 1979, correct?

A. Yes.

Q. As part of your responsibility at that

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time, did you have occasion to follow or have any understanding with respect to the activities of the Surgeon General in preparing reports?

A. In 1979?

Q. Picking that year.

MR. LONG: I am sorry, would you read that back?

MR. BSCHORR: Let me rephrase it.

Q. In 1979, do you recall receiving any requests from the Surgeon General's office or any public health facility relative to the Surgeon General's report concerning any aspect of tobacco's information concerning smoking?

A. I have no specific recollection, but we may very well have.

Q. Isn't it a fact that over the years, the Surgeon General has from time to time made requests to the tobacco industry with respect to sharing with it information concerning health concerns relative to smoking?

A. It has invited the submission of comments and information from time to time, yes.

Q. Has Lorillard itself ever availed itself of that request to provide such information or

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Stevens

comment?

A. I believe they have.

Q. How often did that happen? I know there are many, many Surgeon General's reports, but --

A. Yes. I don't know. I know that, before I came with the company in '69, that they had participated in responses with respect to that report, which was the '64-'65. I do not know in subsequent reports in how many instances we were invited to respond and did respond or didn't. If you want to refresh my recollection, I will be happy to receive the information.

Q. Do you have a recollection as to the 1979 report in particular as to whether or not the issue or one of the issues being addressed was whether or not smoking was addictive?

A. No.

Q. You don't recall that?

A. I do not.

Q. Do you recall that in the 1979 report, the Surgeon General concluded at that time that it was habit-forming, as opposed to addictive?

A. I remember the Surgeon General speaking on addiction. You mentioned earlier the '88

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report. I don't challenge your suggestion that in '79 a portion of his report dealt with habituation. I don't have a specific recollection.

Q. Do you recall that in connection with the 1979 report, the Tobacco Institute issued its own statement concerning smoking, the open controversy?

A. I believe I saw some documents in preparation for this deposition that suggest that.

Q. Did you have anything to do with the preparation of that document?

A. Not to my knowledge. I certainly may have seen it before it was submitted or been made aware during its preparation, but I did not participate in the preparation.

Q. Well, a document of that nature issued by the Tobacco Institute, what would be the procedure with respect to review before it was finalized and distributed?

A. It would vary from event to event, document to document. It's the kind of matter where the policy proposal by the staff would be made to the board of directors, here's what we have been asked to do, here's what we are going to do or

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here's an opportunity for us to respond, get authority for the staff to prepare our response and -- and chapter and verse, word for word, of such an industry response prepared for the industry through the Tobacco Institute, the degree of its being reviewed or approved by companies would vary, I think, from company to company.

Q. How about Lorillard and this specific report in 1979?

A. We were not in the habit of approving every single word of every single document issued by the Tobacco Institute.

Q. We are not talking about every single document. We are talking about this document.

A. I do not recall to what extent we reviewed or did not review that document.

Q. Even though you were a member of the board of directors of the Tobacco Institute at the time; is that right?

A. Notwithstanding my position as a member of the board.

Q. Let me show you another document which has been marked -- we will mark as Exhibit 14, which is a document dated November 6, 1979, and

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it's a document from Mr. Kastenbaum to you concerning -- well, we will deal with the subject. It says what it says.

(Stevens Exhibit 14, letter dated November 6, 1979 from Mr. Kastenbaum to Mr. Stevens, marked for identification, as of this date.)

A. I have read the cover letter. If you want me -- if you are going to question me with respect to the attachments, I --

Q. I will not go into detail on that. I just want to know if you recall receiving this letter on or about that date.

A. I have no specific recollection of it, but I don't question that I did. I don't see a date stamp, but it was addressed to me and I assume, in the normal course of events, it reached me.

Q. And Mr. Kastenbaum, again, was who?

A. He was a staff member at the Tobacco Institute and I think his -- I can't make out his title, but he was director of statistics. I believe that's what it says.

Q. Do you recall having any discussions

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with him concerning the issue that is referred to in his letter with respect to reviewing this manuscript and examining it critically?

A. No, I don't. But I don't -- I don't know whether I did or I didn't. My review for today demonstrated that a great deal of written material came to me from Mr. Kastenbaum on the smoking -- on the issue of smokers' premiums, State Mutual matter.

Both -- strike that. I testified earlier that I had been requested by CNA to get them information. I turned to the Tobacco Institute. I also testified that the Tobacco Institute had requested information and I turned to CNA, and I thereafter became a conduit through which some of this information passed and I reviewed a considerable body of information that indicated that on this subject, I got on Mr. Kastenbaum's mailing list and I received a lot of material.

So that's a long-winded answer to your question. Whether I discussed this with him, I do not know.

Q. But this and similar type of material

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was coming in to you from Mr. Kastenbaum relative to the premium issue that was being discussed with the insurance companies?

A. I think so, yes.

Q. Did any of that information also relate to the Surgeon General's report?

A. Not that I recall, but that's why I asked whether, given your previous line of questions, whether I should read all of this, because if there is a reference in here to the Surgeon General's report, I would need to refresh my recollection of that.

Q. Let me show you a document that is dared June 12, 1980, from Mr. Kastenbaum to Prudential Insurance now. Prudential is another insurance company that sells life insurance; is that right?

A. Indeed.

Q. It probably sells other things, too.

A. These days.

Q. And it is stating that it is in -- referring to an author's request for comments and suggestions, I am submitting two copies of my discussion of this manuscript, and he encloses a manuscript that is referred to by Mr. Cowell and

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Mr. Hirst, and he sends a copy of that to State Mutual, which is the subject of that discussion, I believe.

A. Yes, sir.

MR. BSCHORR: Let's mark this as Exhibit 15.

(Stevens Exhibit 15, letter dated June 12, 1980 from Mr. Kastenbaum to Mr. Dillon, marked for identification, as of this date.)

Q. We will come back to that one. We are having trouble finding that one, but I won't forget it.

Let me mark this as 16 -- we will leave 15 open for the moment -- a document dated January 3, 1978, which indicates that a copy was sent to you, among others, of a memorandum from Mr. Kastenbaum and Mr. Waite, and it is five pages in length. That's 16.

(Stevens Exhibit 16, memorandum dated January 3, 1978 from Mr. Kastenbaum and Mr. Waite, marked for identification, as of this date.)

REQ MR. BSCHORR: While you are looking at that, Mr. Stevens -- Mr. Long, I have

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another request of you.

When you look at the first two pages of this document, Exhibit 16, you will note it has Bates stamp numbers that go from 8407 to 8408, and yet, if you look at the pagination on the document, it goes from page 1 to page 3. We have looked for a page 2 and haven't found it.

MS. CLARK: This is not a document produced from Lorillard's files. It is not Lorillard's Bates number.

MR. BSCHORR: All right. You know the Bates numbers better than I do. We will find out who produced it. But since it went to Mr. Stevens, there must have been another copy of it that should have been produced by Lorillard.

MS. CLARK: It is possible. If you want is to look for that --

MR. BSCHORR: If you could find that -- I am really just looking for the second page. If you can accommodate me on that one, I would appreciate it.

MR. LONG: Our request is, can we take

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the lunch break fairly soon?

MR. BSCHORR: Why don't we go another -- let me finish this document and then we will break.

A. I haven't read this document, sir. Should I take the time to do so?

Q. Why don't we take a lunch break now --

A. Maybe I can save us a little time.

I saw this document yesterday and I have no recollection of it and don't remember. I realize I am a copy addressee, but I have no recollection of this document.

Q. So it did not refresh your recollection when you looked at this yesterday?

A. Not one bit.

MR. BSCHORR: Why don't we take our lunch break, then.

THE VIDEOGRAPHER: The time is 12:29 p.m. and we are going off the record.

(Luncheon recess: 12:29 p.m.)

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A F T E R N O O N S E S S I O N

(Time noted: 1:26 p.m.)

A R T H U R J. S T E V E N S, resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. BSCHORR:

Q. Good afternoon, Mr. Stevens. I think you have in front of you what has been marked as Exhibit 15, and I will ask you whether or not you recall receiving that document on or about the date it bears, June 12, 1980.

A. I do not recall receiving it until I reviewed it in connection with my review of documents with counsel in preparation for this deposition.

MS. CLARK: I am sorry, did you say Exhibit 15?

MR. BSCHORR: I believe I said 15. If I didn't, I meant 15.

Q. As a result of your reviewing it the other day, do you now recall that you did, in fact, receive that document?

A. I have no independent recollection, but I don't question that I did.

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Q. And it does have the "received" stamp that your secretary puts on it, correct?

A. It appears to have that, yes.

Q. Is this another document that deals with the continuing discussion with the insurance industry relative to premium discounts?

A. Yes.

Q. Am I correct that this is referring to a critique of an article written by a Mr. Cowell and a Mr. Hirst in which they reached certain conclusions concerning the relationship between smoking and disease?

A. That's the reference in the materials.

Q. If you would turn to the fourth page of the memo itself, of the critique, under Conclusions, the first sentence "The authors have shown that there is a significant difference between smoker and nonsmoker mortality. Their argument for having separate policies for smokers and nonsmokers is compelling."

Do you recall having any discussions with Mr. Kastenbaum or anyone else concerning his conclusion as to the conclusion of those two authors?

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A. I do not.

Q. Do you recall any discussion at all with anyone concerning this memorandum, this critique?

A. No, I do not.

Q. Do you recall -- well, if you don't recall, you don't recall. But looking at page 2, let me just see if this refreshes your recollection, that the discussion concerning nonsmoker discounts and premiums and the article by these two gentlemen, Cowell and Hirst, had a relationship to the Surgeon General's findings with respect to the ratio of smoking and nonsmoking mortality?

A. I did not recall that other than its reference here.

Q. But that does not refresh your recollection of any discussions that took place concerning the relevance of the Surgeon General's findings on mortality as it might apply to the discussions you were having with any insurance companies?

A. It does not.

Q. Let me mark as Stevens Exhibit 17 a six-page memorandum entitled "Confidential Tobacco

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Education Council Initiative and Assessment and Recommendations," February 3, 1984, and it also has, at the last page, the "received" stamp that your secretary, as I understand it, would have put on that.

That's Exhibit 17.

(Stevens Exhibit 17, six-page memorandum entitled "Confidential Tobacco Education Council Initiative and Assessment and Recommendations," dated February 3, 1984, marked for identification, as of this date.)

Q. Was this a document you would have reviewed in preparation?

A. I don't remember seeing this document.

Q. Well, then, take a moment, if you would, and just look at it.

A. I have not read the whole document, but scanning it, I have no recollection, I have no current recollection of seeing this document.

Q. As part of your responsibilities at Lorillard, did that include dealing with legislative initiatives?

A. Yes, it did.

Q. Do you have any recollection of dealing

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with any legislative initiative in the State of California concerning an excise tax to be collected on tobacco products that was being considered in the early to mid-eighties?

A. I have some recollection of that.

Q. What do you recall about that event?

A. It was one, perhaps not the first in a repetitive series of ballot initiatives, measures in California with respect to various matters regarding cigarettes, some of them increases in taxes, some of them smoking restriction areas. This one in this second sentence of the first paragraph refers to a 10 percent excise tax increase, so this would fit into my general recollection of the California ballot measures.

Q. And this particular initiative states in that same first paragraph, "It is to be used as a media campaign against smoking to educate kids as to the dangers of smoking and to convince smokers they can quit successfully."

Do you see that?

A. Yes, I do.

Q. Let me just focus on the part of to educate kids in the dangers of smoking. Do you see

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that reference?

A. Yes.

Q. Do you recall at any time taking any positions on behalf of Lorillard in any legislative activities against initiatives that would be used to educate kids as to the dangers of smoking?

A. Yes.

Q. What types of initiatives did you oppose?

A. Well, as I indicated, there were a number of them. Those specifically related to educating kids, I don't remember beyond this initiative, which was -- and I don't know whether it was Prop. 65 or 101, but it was to increase the excise tax to use for educational programs for antismoking and educational, media programs. My recollection is that it passed and it has been in effect in California for many years.

Specifically to answer your question, yes, the industry opposed the ballot measure.

Q. Going back to the 1970s, do you recall whether Lorillard had any part of its advertising budget or public relations budget focused on an initiative to educate kids to the dangers of

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smoking?

A. I have no recollection of any such allocation or --

Q. Is it fair to say that, in fact, there was no such allocation?

A. It is.

Q. Would that be true of the 1980s as well?

A. As far as I know.

Q. How about the 1990s?

A. There, I can't be so certain because towards the end of the 1990s, Lorillard and other companies and some industry efforts were being directed towards youth smoking. Some of those were through the Tobacco Institute, some of those were through individual companies, and there were a variety of programs that addressed that issue.

Q. Do you recall whether Lorillard itself allocated any portion of its either advertising, public relations or other budgets for the purposes of educating kids to the dangers of smoking?

A. Perhaps in 1999, when I was not at --

Q. But during your rein, you don't recall that?

A. No. I do recall that we participated in

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programs through the Tobacco Institute called "We Card" and the preparation of the materials from the Tobacco Institute addressed through the schools, through the National Association of the PTA, and others directed at educating parents on how to deal with the smoking issue with underage children. So, yes, there was some activity in which Lorillard participated financially.

Q. Do you recall how much money was devoted to that effort?

A. I do not.

Q. Would you have been the one responsible for approving budgetary items in that regard for Lorillard?

A. No, not totally, in the sense that those activities that were conducted in conjunction with the other companies through the Tobacco Institute membership would have been either part and parcel of our membership obligation, financial obligation to the TI, or a special assessment to the TI, and I would have been cognizant of that budget, but it would have had senior management approval as well.

So I wasn't in control of such a budget, or solely in control, I should say.

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Q. Do you recall, in the 19 -- let's take mid-1980s, 1985, that time period -- what the approximate budget was for funding to the Tobacco Institute by Lorillard?

A. No, I do not.

Q. Do you recall for any date during your tenure?

A. No. It was a market share type allocation. No, I do not.

Q. How about for the CTR, do you recall any budget amounts in any particular year for that?

A. I do not. But again, that, too, was somewhat related to market share.

Q. Do you recall giving testimony in a case where Mr. Rosenblatt asked you some questions?

A. I do.

Q. Do you recall his asking you questions as to whether or not you recalled at that time, which was around 1993, what the Lorillard budget was?

A. I don't remember the specific Q and A from Mr. Rosenblatt, but I think there were some questions in that regard.

Q. Incidentally, other than the testimony

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you gave in that case, which I think is entitled Braun versus Philip Morris, have you ever testified in any other case involving tobacco?

A. I had my recollection refreshed some time ago, that I testified way back in the early seventies in, I believe, an antitrust refusal to deal case involving Lorillard out in Oregon, Pacific Tobacco -- I think Pacific Tobacco.

I also testified once in a breach of contract action against Lorillard in the New York State Supreme Court trial court involving Robert Salmon and sales promotion.

Q. That was actual trial testimony; is that right?

A. That was, the latter one, the Salmon was trial deposition. The Pacific Tobacco, I think, was deposition testimony.

Q. Other than those two instances and the Braun instance, any others?

A. Not that I can recall.

Q. Let me just finish this area here.

Let me mark as Exhibit 18, a memorandum from Mr. Mozingo to a number of people, including Mr. Cherry, dated February 13, 1984, on the subject

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of the California initiative.

(Stevens Exhibit 18, memorandum dated February 13, 1984 from Mr. Mozingo to Mr. Ainsworth and others, marked for identification, as of this date.)

Q. I recognize, sir, this document does not, on its face indicate you received it, but let me ask you, Mr. Cherry was your assistant or was your deputy?

A. Mr. Cherry was in the law department, what his title was in 1984, I think he was senior associate general counsel at that point, but I am not positive.

Q. Would your working relationship with him have been such that communications that he would have received on areas like the California initiative would have been shared with you?

A. Not in every instance.

Q. Do you, in any event, have any recollection of seeing this one?

A. May I read it, please.

I have no recollection at this time of seeing this memo. I may have, but I don't recall.

Q. In both Exhibit 17 and Exhibit 18,

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specifically page 3 of Exhibit 17, item 3 --

A. I am sorry, page 3, item 3?

Q. -- page 3, item 3, as well as page 5 of Exhibit 17 and also on Exhibit 18, there are references to Blue Cross/Blue Shield and a mailing.

Do you see that?

A. I see it on page 3 of 7 of --

Q. Looking at page 5, you will see item number 2?

A. I see that.

Q. Do you have any recollection or does that in any way refresh your recollection of any discussions you had concerning any involvement of Blue Cross/Blue Shield in this initiative?

A. No, it does not.

Q. Do you have any recollection of any involvement of Blue Cross/Blue Shield in any other initiative relative to smoking?

A. I do not.

Q. I take it, from that answer, that you never had any communications directly with any representatives of Blue Cross or the Blue Cross association?

MR. LONG: Object to the form of the

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question.

A. Not that I presently recall.

Q. You had indicated earlier today that the -- I think I heard you say that the Committee of Counsel was a part of the Tobacco Institute.

A. I think technically, the Committee of Counsel, at least in later years -- I can't speak for prior to '69 or even in the early seventies -- was a committee of the Tobacco Institute.

Q. Now, did that committee of the Tobacco Institute have any relationship to any activities of the CTR?

MR. LONG: Object to the form of the question.

MR. BSCHORR: On what grounds?

MR. LONG: Any relationship, that could mean was it associated with, was a part of, did they ever talk about things? It seems that it is an extremely broad question.

MR. BSCHORR: Let's take each one of those.

Q. Did the Committee of Counsel committee of the Tobacco Institute have any business dealings

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with CTR?

A. Not to my knowledge, no.

Q. Did it have any involvement in directing the activities in any way of the CTR?

A. Absolutely not.

Q. Did it from time to time have any communications with the CTR?

A. Not to my knowledge.

Q. Did it from time to time direct any aspects of what is called special projects?

A. The Committee of Counsel?

Q. Yes.

A. Direct? The Committee of Counsel had knowledge of -- would you repeat the question?

MR. BSCHORR: Read it back, please.

(Record read.)

A. If you are referring to so-called CTR special projects, the answer is no.

Q. Do you have any understanding of who did direct projects and special projects?

A. Let me make sure I understand. You are asking whether the committee qua committee had any function with respect to the direction of CTR special projects? Is that the precise question?

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Q. I will take that question, and I will obviously have a follow-up with the word "qua," which is a great qualification there, but let's take your question. Yes, I will take that.

A. The lawyers on the Committee of Counsel, as I testified earlier, were essentially the generals counsel of the cigarette companies. The general counsels of the cigarette companies were aware of and involved in knowledge and somewhat you could say direction of CTR special projects.

So some of the activities relating to CTR special projects would come to the attention of the generals counsel as they convened as a Committee of Counsel.

That's why I am drawing a distinction between the counsel, the committee qua committee, my term, and the generals counsel.

Q. So what you are saying is that the various assembled personages who comprised the Committee of Counsel, would from time to time act upon or direct the activities of CTR with respect to its special projects?

MR. LONG: Object to the form.

A. Not CTR. It would be made aware of,

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receive recommendations, give approvals with respect to CTR special projects, but not the business of CTR.

Q. I didn't -- I don't think I said the business of CTR. I said CTR special projects.

A. And I am emphasizing that.

Q. So am I correct that from time to time these personages who comprised the Committee of Counsel would from time to time direct the activities of CTR special projects?

A. Yes. Direct in the sense that the actual day-to-day processing and administration of the CTR special projects was in the domain of the outside litigation counsel.

Q. Who was that at the time or who were they at the time?

A. It was a changing cast of characters over the years. For Lorillard, it was essentially Shook, Hardy & Bacon.

Q. So there was no change of characters with respect to Lorillard, it was always Shook, Hardy & Bacon?

A. Well, yes, except that in some of the years during which the Jacobs, Medinger & Finnegan

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firm represented Reynolds, they were also involved in special projects on behalf of some of the other companies who were not just their client Reynolds.

Q. Tell me who was involved in special projects.

A. Firms?

Q. Yes.

A. Beyond Shook, Hardy & Bacon and Jacobs & Medinger, I don't know what other firms -- I don't recall at the moment if there were other firms involved, but there may have been in some years.

Q. Was Janet Brown's firm ever involved?

A. It may have been. I don't know.

Q. Webster Sheffield, were they ever involved?

A. Again, they may have been.

They were certainly aware of them and they were certainly, I would think, consulted from time to time by Jacob Medinger and Shook, Hardy, but whether they actually helped locate and engage researchers for the CTR special projects, I don't know, I don't remember.

Q. Did Philip Morris have a counsel that was involved in the special projects?

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A. I believe they used Shook, Hardy & Bacon.

Q. So both you and Philip Morris used Shook, Hardy & Bacon for that purpose?

A. From time to time, yes.

Q. Well, you said all the way through you used Shook, Hardy & Bacon. Was there a point in time when Philip Morris didn't use Shook, Hardy & Bacon?

A. That's what I don't know.

Q. Now, the Committee of Counsel, either qua committee or in some individual collective capacity, did they meet from time to time to talk about special projects?

MR. LONG: Object to the form of the question.

A. They met from time to time and from time to time special projects would be among the matters they discussed, yes.

Q. Now, who actually directed the activities of the special projects, the committee or the outside counsel or someone else?

MR. LONG: Object to the form of the question.

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A. I don't know that I can give you a -- the outside counsel had the primary responsibility for the direction and administration of them. It is not unreasonable to say that all of the activities of the outside counsel relating to litigation were under the direction of the generals counsel, so the answer is both were involved.

The final approval for a CTR special project came from the companies, from the generals counsel, so to that extent, that's final approval and that means something in the way of direction, that's the way the process worked.

Q. Did any part of the special project activity involve the funding of researchers to do any research with respect to any aspect of tobacco?

A. Yes.

Q. Do you have any understanding as to how such researchers were identified and located?

A. Yes.

Q. What is that understanding?

A. The litigation counsel were charged with the primary responsibility of finding researchers who were interested and willing and able to conduct research or receiving overtures from researchers to

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lawyers who indicated an interest on their part in doing some of it.

Q. What type of research was undertaken by these researchers?

A. Over the years, it was a great variety of research with respect to a whole host of smoking and health and smoking and health-related issues.

Q. Were any of those materials published?

A. My understanding is that many of the CTR special projects were published, yes.

Q. But not all of them?

A. I don't know whether all of them were. I believe most of them were published, maybe all, but there were many, so I can't be certain of that.

Q. If one wanted to find a list of all of the projects and special projects that were published, all of the research projects, where would one go?

A. I don't know.

Q. You never saw such a list?

A. I don't know that I ever did.

Q. Do you recall lists being presented to the Committee of Counsel, either qua committee or in some individual capacity?

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A. From time to time I think there were status reports or current reports of such special projects as were underway.

Q. Would those projects be -- not underway. I am talking about published now. I want to be sure I understand what you are talking about?

A. Let me be sure I understand what you are talking about.

Did I ever see a list of published CTR special projects? I don't know.

Q. Do you recall that a list of special projects that were being undertaken was from time to time presented to the committee?

A. I believe so.

Q. Who would have prepared that list?

A. It would have varied from time to time. I think Shook, Hardy & Bacon or Jacobs & Medinger, whoever of -- get my grammar right -- whichever of the firms was responsible for the particular special project grantee.

Q. And that would have normally been one of the outside firms, though, in your recollection?

A. That's correct.

Q. Do you recall any criticism ever being

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raised by anyone concerning any of the activities of the special projects?

MR. LONG: Object to the form. Vague, overly broad.

A. Yes.

Q. In fact, you, yourself, had some criticism from time to time, did you not?

A. That's correct.

Q. What was the nature of your criticism?

A. It differed --

MR. LONG: Whoa, whoa.

THE WITNESS: Sorry.

MR. LONG: You can answer the question unless you are going to talk about discussions you had with the client or another lawyer about legal issues. If the answer is something other than that, you can answer the question. If not, I am going to instruct you not to answer the question.

THE WITNESS: Let me see if I understand your instruction.

A. I think my criticisms varied from time to time, but they included not utilizing the same grantee too often. They sometimes commented on the

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cost of a particular proposed special project, things of that nature.

Q. Did you ever comment on the quality of the projects?

A. Yes.

Q. The quality of the research?

A. I don't know that I would say quality, but sometimes the magnitude, the scope -- yeah, I guess it is fair to say that sometimes it was criticism of the quality.

Q. How about the independence of the projects or the research?

A. No. I don't think I ever criticized the independence.

Q. What was the purpose of the special project?

A. The special projects were designed to furnish litigation counsel with information and materials and knowledge and potential witnesses and experts for use in support of the industry's defense of its product liability litigation.

Q. Any other purpose?

A. Not of which I am aware.

Q. Was the special project activity

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underway when you became general counsel in 1969?

A. Yes.

Q. Was its purpose, as you just stated, the same at that time as it is on an ongoing basis?

A. That was my understanding when I came into the industry and throughout my tenure.

Q. Is the special project activity still ongoing?

A. Not to my knowledge.

Q. When did it end?

A. I am not exactly sure. I think it ended in 1992.

Q. Do you have any understanding of the reasons why it ended in 1992?

A. In part, yes.

Q. What are those reasons?

MR. LONG: If it's -- unless you have got a document that you are going to talk about, I am going to instruct him not to answer.

MR. BSCHORR: I have never heard an objection like that.

MR. LONG: It is a privilege objection. We know what we are talking

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about. It is a privilege objection. There are certain rulings that have been made that you can ask him questions about documents that you have, but my impression is his answer would involve legal issues and legal communications and so --

Q. I am asking you for the reason. Are you saying that the only reason it ended was a legal reason?

A. Yes.

Q. The special project activity, was it funded by the various companies?

A. Yes.

Q. Was that a separate funding from what went into CTR?

A. Yes.

Q. Was it a separate funding from what went into the Tobacco Institute?

A. Yes.

Q. Other than those three funding activities, were there other funding activities that the companies collectively engaged in for the purposes of furthering its product?

MR. LONG: Object to the form.

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You are not limiting that to just research activities, I mean, just anything?

MR. BSCHORR: Joint ones, yes. I am not talking about individual advertising, which is obviously individual.

MR. LONG: My question is, are you limiting this to areas of research or just any area?

MR. BSCHORR: I am asking right now any area, because TI goes beyond research, obviously.

MR. LONG: Sure.

A. May I hear the question, please?

Q. Other than funding for TI, funding for CTR and funding for special projects, were there other activities where the tobacco industry jointly funded projects?

A. Yes.

Q. What were they?

A. What I would characterize -- categorize as institutional research.

Q. What does that mean? Pardon my not knowing -- maybe I should -- but what does that mean?

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A. From time to time, the industry, with joint funding -- excuse me.

From time to time, the companies funded research into a variety of scientific and technical matters on the part of institutions like Harvard and Washington University of St. Louis and UCLA and institutions of similar nature that I categorize as institutional research.

Q. So by institutional, you mean --

A. The institutions.

Q. -- the Harvards, the institutions of this world. Fair enough.

Now, did any of those institutional research projects deal with smoking and causation?

A. I believe some did, yes.

Q. Do you know whether any reports were rendered as a result of the research that was done by those institutions?

A. I believe there were.

Q. Did those reports make any sort of conclusion or come to any sort of conclusion concerning causation between smoking and disease?

A. I don't remember that.

Q. You don't remember that?

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A. I do not remember whether -- first of all, I don't remember each and every report and I don't remember what --

Q. But you do remember there were reports that did cover the subject of smoking and causation?

A. I think I testified I thought there were.

Q. You just don't remember what they said? Is that right?

A. That's correct.

Q. Do you recall whether they were publicly disclosed at the time they were, or approximately the time they were issued?

A. I don't recall.

Q. Would that be something that would go to the Committee of Counsel to decide?

MR. LONG: That something being what?

Q. The publication of those reports from institutions.

A. No, sir.

Q. Who would make the decision to publish those?

A. I believe the researcher or the

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institution. We are talking about the institutional grants?

Q. Yes, we are.

A. I believe the decision with respect to publication was made by the researcher or the institution. I believe that in connection with such grants, the grantee and the institution was encouraged to publish and to acknowledge the participation, in whole or in part, of tobacco funding.

Q. Now, with respect to the special projects, who would make the decision as to the publication of the results of those projects?

A. The grantee and there, too, my recollection is that CTR grantees, CTR special project grantees --

MR. LONG: Do you want to take a break for a minute?

Q. If you want to take a break to get some water --

A. Just let me get over the frog.

My recollection is that CTR special project grantees were encouraged to publish and to acknowledge the funding as a CTR special grant.

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Q. As a special project grant?

A. Yes. Thank you.

Q. Would that be different than the grantees who were doing CTR research?

MR. LONG: Are you speaking with SAB CTR research?

MR. BSCHORR: Yes.

A. There were many differences between CTR grantees and CTR special project grantees.

Q. Okay.

A. CTR grantees received their funds from the CTR, those were disbursements of tobacco company funds.

Q. Which went to the CTR and out to the grantee?

A. Yes. The CTR was the disbursing agency.

Those projects, those CTR grants were the subject of consideration, approval and authorization by the scientific advisory board of the CTR in conjunction with the scientific director.

Q. As to be contrasted with special projects -- now, you say there were differences. I now need the other side of the difference.

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A. Yes. As contrasted with CTR special projects, which were administered by the outside law firms with funds from the company, but which involved independent research by grantees, who were again encouraged to publish and to acknowledge their funding by the companies.

Q. The CTR, as I recall it -- and this goes back before your time -- was created sometime in the 1950s or at least the predecessor name of it; is that right?

A. That's my understanding.

Q. Do you recall what its purpose was at the time it was -- did you ever go back and look at what the purpose of the CTR was?

A. I had come to have some recognition, after coming with the industry in 1969, as to the general purpose of the CTR, yes.

Q. How would you describe that purpose?

A. To fund independent research into subjects related to smoking.

Q. And to publish those results to the public so they would know better the facts and information about smoking?

A. The CTR grants, yes.

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Q. Is that also true of special projects?

MR. LONG: Which part?

Q. Is there more than one special project?

MR. LONG: No, your question about -- you were talking about research, you were talking about publication, are you talking about all of it or --

MR. BSCHORR: All of it.

MR. LONG: Let me hear the question back. I am not clear here.

(Record read.)

A. I am sorry, I am not understanding the question. CTR -- perhaps you want to repeat the question so I am sure I am understanding it and answering what you want to know.

Q. CTR, you just indicated what you understood was the purpose of CTR when it was created, and you said, when you came on board in 1969, you took it upon yourself to find out what the purpose of CTR was when it was created, correct?

A. Yes.

Q. Now, that purpose, you stated, was to do scientific research and to disclose that research

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to the public?

A. To conduct independent research and to disclose it, yes.

Q. What was the purpose of special projects under CTR?

A. I thought I testified earlier that its purpose was to fund independent research that would be of use to and value to the company's product liability litigation lawyers for their use in the defense of product liability litigation.

Q. You used the word "independent research."

A. Yes.

Q. Is it your testimony that the research grants given to special project individuals were independent in the sense that we let the chips fall where they are, whatever they come up with, we will publish?

MR. ZIRLIN: Object to the form of the question.

A. Yes. In part, it meant also it would be conducted by people who had -- who were not employed by the industry and who had --

Q. Is that your use of the word

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"independent?

A. And who had independence in that sense, yes.

Q. Would you agree with the following statement, as to special projects: There are two principal purposes: A, to develop witnesses, to allow scientists to develop work, not to develop the ultimate in science. Our critical motivation is to stimulate the scientists. Some don't pan out as witnesses, but lead us to other witnesses and ideas. B, to fill gaps in knowledge we perceive by commissioning project work to further our ability to make scientific arguments through scientists."

A. Couldn't have said it better myself.

Q. I think you did say it.

A. I think so.

Q. And that was stated in 1981 by you.

MR. BSCHORR: Let's mark this document as 18. 19, I am sorry.

(Stevens Exhibit 19, memorandum dictated November 23, 1981, dated September 10, 1981 from Mr. Stevens, marked for identification, as of this date.)

MR. LONG: For the record, I make an

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objection to the introduction and use of this document in cross-examination on the grounds of privilege and work product.

Q. With respect to this document, Exhibit 19, is this a document that you prepared, sir?

A. Yes.

Q. Is it a document that you prepared as a result of the transcription of your notes of a special committee meeting discussion held on September 10, 1981?

A. That's what it says in the first paragraph. Therefore, I assume that's correct.

Q. And you have no reason to believe that that's not the case, right?

A. I do not.

Q. Am I correct from reading this that the concept of special project was on the agenda at that meeting?

A. Yes.

Q. Let's just talk about some of the people that were in attendance. Janet Brown, she was from Chadbourne; is that right?

A. Yes.

Q. And Mr. Jacob was the outside manager

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from Jacob Medinger?

A. Yes.

Q. Who was Mr. Finnegan?

A. His partner, Mr. Jacob's partner.

Q. How about Witt?

A. At that point I think the general counsel of Reynolds.

Q. And Tom Bezanson --

A. Yes. Partner at Chadbourne.

Q. Mr. Cherry is your colleague, and yourself. Mr. Northrip?

A. Partner at Shook, Hardy.

Q. Sirridge?

A. Likewise.

Q. And Shinn likewise?

A. Likewise.

Q. And Fred Newman?

A. At that time, he wasn't the general counsel, but on the legal staff at Philip Morris.

Q. Frank Decker?

A. At that time a partner at what was then Webster Sheffield.

Q. And Bob Sachs, it says B&W.

A. It says legal staff at B&W. What his

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title was, I don't know.

Q. So there were four outside law firms present at this, or representatives of four, right?

A. One, two, three, four. That's correct.

Q. Am I correct that your description of the principal purposes of the special project as set forth there and as I read before is, as you understood, the purposes of the special projects?

A. I would like to reread it.

I think so, in part, although when I reflect and see that it was part of a transcription of my notes, it may have been an attempt to memorialize what others at the meeting felt was the purpose. I can't necessarily distinguish between the two.

Q. Well, sitting here today, do you have any information that would suggest that you would wish to add or subtract from the definition of the purposes as you set forth there?

MR. LONG: Object to the form.

A. I don't think I would subtract any. I mean, this seems to me consistent with my testimony that both the general and the specific purpose of CTR special projects was to provide useful

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information to outside litigation counsel for use in litigation.

Q. Now, litigation counsel, in handling the litigation, they were interested in things that would support the tobacco position, correct, in litigation?

MR. LONG: Object to the form of the question.

A. In part, yes.

Q. Well, do you recall any discussions with any of the outside counsel that were either present at this or any other committee meeting in which they indicated they would like to develop research that would support the position of the plaintiff?

MR. LONG: Object to the question.

A. No.

MR. LONG: Wait, Arthur. I objected.

Go ahead.

THE WITNESS: Did you object to the question or -- excuse me.

MR. LONG: Go ahead.

Q. At the top of the second page of that memorandum, if you could turn the page, sir, there is a reference to, in the second paragraph,

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something called Special 4. What is Special 4?

A. Special 4 was an account similar to special projects designed to provide litigation counsel with information for use in product liability litigation with the specific and more pointed purpose of preserving the privilege, such other protections as might be available with respect to that information, attorney-client privilege, work product privilege, and therefore did not carry with it the understanding and the expectation that the researcher would publish the information, but the work that was being done was confidential.

Q. So if I understand correctly -- and please correct me if I am wrong -- special project had at least two components to it. It had a component where research was commissioned and would be made public, even though under the direction of outside counsel, and then there is something called Special 4 where such research would not necessarily be made public; indeed, probably would not be made public.

Is that correct?

MR. LONG: Objection to the form of the

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question. Mischaracterizes his testimony.

MR. BSCHORR: I am not mischaracterizing it at all. I am asking him to tell me --

MR. ZIRLIN: You are mischaracterizing his testimony, because you are not saying CTR special projects. Just try not to mislead the jury or the judge, please.

He made it very clear when he was talking about CTR special projects, and you keep saying special projects as if it is special accounts and special projects are part and parcel of the same thing, and I strenuously object.

MR. BSCHORR: I am glad you object, but since the memo we are looking at, and maybe you have a copy in front of you, if you wish to look at it, says --

MR. ZIRLIN: I don't need to look at the memo, sir.

MR. BSCHORR: It says in the one case "CTR special project" and right after that it simply says "special project." Interchangeable.

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MR. ZIRLIN: They are not interchangeable.

MR. BSCHORR: If you want to testify, let me know, we will work that one out in due course, but right now I don't want to take Mr. Stevens' time more than necessary. Let's move forward here.

Q. Special 4. What is the difference between special 4 and special projects?

A. I thought I described it. To me, Special 4 was an adjunct of special projects, CTR special projects, and it had the very significant distinction of being work that was intended to be protected for use in litigation.

Q. When you say "work," you mean research done by outside researchers?

A. Whether it was research or whether it was consultation, whether it was literature review, whatever it was that the grantee was commissioned to do or asked to do. It could have been advice to counsel.

Q. Other than special projects and Special 4, are there any other categories of research or activities that were undergone by CTR?

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MR. LONG: I am going to object to the form of the question. Again, I think it mischaracterizes his testimony.

Q. Well, is Special 4 part of CTR?

MR. BSCHORR: Maybe that's the problem.

A. No.

Q. It was not? I see.

So we have special projects under CTR and then we have Special 4.

A. Special 4, that's correct.

Q. Now, who had responsibility for Special 4?

A. One or two law firms.

Q. Which two or one?

A. In the -- I believe in the early years, for some time, it was Jacob Medinger, and then -- I think it fell to Shook, Hardy & Bacon, when it became known as Shook, Hardy & Bacon special account.

Q. So the heading on page 2, where it says "Difference in CTR Projects and Special Projects," neither of those headings actually refers to Special 4, is that right, because Special 4 is something separate?

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A. I suggest that maybe the heading was a little inaccurate. It is intended to deal with the difference in, between CTR special projects and Special 4. It was probably not a very accurate caption.

Q. Do you know why the number 4 was used in that appellation?

A. No, I do not. When I came into the industry in 1969, that number was already there.

Q. How about numbers 1, 2 and 3, were they used for anything, if you know?

A. I have no idea. I think it was used to distinguish it from other accounts, but I don't know.

MR. BSCHORR: Let me mark as the next exhibit, 20, a letter from Mr. Stevens to Mr. Finnegan from Jacob Medinger dated February 22, 1980. That's Exhibit 20.

(Stevens Exhibit 20, letter dated February 22, 1980 from Mr. Stevens to Mr. Finnegan, marked for identification, as of this date.)

Q. Is this also a letter that you wrote, sir?

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A. Yes. I wrote this letter.

Q. And the special project number 4 is the same special project 4 we are referring to in relation to the last exhibit?

MR. LONG: I object. It says special account number 4.

MR. BSCHORR: Fair enough.

Q. Special account number 4, is that the same as Special 4?

A. Yes. In the previous exhibit Special 4 was referring to Special 4 in a generic sense, not a special project. This is referring to a specific project.

Q. No, I realize the heading is a specific project, but I am referring to the third line where it says special account number 4. That's the same?

A. Correct.

Q. How was the funding done for Special 4 or special account number 4 projects? How was that accomplished?

A. On an -- I guess I would describe it on an assessment basis, each of the companies would agree to participate and they would share the cost.

Q. Would they agree to participate and

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share the cost on a project-by-project basis?

A. Yes.

Q. So, for example, the Becker tobacco glycoprotein project that is referred to in the heading would be a special project that would be specially funded, correct?

MR. ZIRLIN: Object to the form.

A. Yes.

MR. ZIRLIN: Mr. Bschorr, I will request that when you are referring to a special account project, you refer to as a special project. If you are referring to a CTR special project, you refer to that as CTR special project. Otherwise we will have a confused record.

MR. BSCHORR: Thank you for that suggestion. I will try to adopt it if I believe it is appropriate.

Q. If you look at the last page, sir, the cc's, are these all members of the Committee of Counsel?

A. Some of them were members of the Committee of Counsel. Some of them were their outside lawyers, I believe, their product liability

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litigation counsel.

Q. And Mr. Schultz, who is referred to as the last bc, who is that, or Dr. Schultz?

A. Dr. Schultz was at that time a Lorillard employee.

Q. Am I correct that given that this is a special account number 4 type of project, that this was a project that was intended to be kept confidential?

A. Yes.

Q. What was the project that was undertaken, do you know?

A. I don't think I could describe what Dr. Bick was doing beyond dealing with a material known as a tobacco glycoprotein. As I sit here now, I don't know what that was.

Q. You refer in the second page in the fourth paragraph, "These kinds of overruns."

Do you see that?

A. Yes, sir.

Q. What did you mean by that?

A. They seem to -- I believe they refer to earlier references in the letter on page 2 at the top and at the bottom of page 1, in the last

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paragraph, too, what I thought were excessive costs for this work.

Q. I may have misunderstood you, and forgive me if I did, but I thought you indicated before that with respect to special account 4 projects, they were individually funded on a project-by-project basis.

A. I did.

Q. And you would therefore, at least from my understanding of that answer, understand what the cost would be at the time that it was funded?

A. Yes, but like any other -- like many other endeavors, they were estimates and there could be cost overruns. A researcher would find something along the way that required a diversion in the road and cost more money.

Q. You indicate at the top of the second page that this was not the subject of specific prior approval, this project.

Do you see that?

A. Yes, I do.

Q. How does that -- does that refresh your recollection in any way as to the way this project was funded?

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A. No, no, it doesn't.

Q. Do you believe this project was funded in accordance with what you indicated was the normal way of having specific funding prior to the engagement of the project?

A. 20 years later, I don't know. It was -- let me try and -- projects were approved on the basis of an estimated budget. There could be overruns. They could cost more. Most projects got specific prior approval.

From time to time, for reasons that would occur occasionally, counsel would see a need to get a project underway without prior approval. This, apparently, was one of those, and I was complaining that it cost too much.

Q. Let me mark as Exhibit 21 a one-page letter from you, sir, to Mr. Jacob dated September 11, 1981.

(Stevens Exhibit 21, letter dated September 11, 1981 from Mr. Stevens to Mr. Jacob, marked for identification, as of this date.)

MR. LONG: For the record, I am going to object to the use of this document on the

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grounds of privilege and work product.

Q. Do you recall writing this document, sir?

THE WITNESS: Can I go ahead, in the case of your objection?

MR. LONG: Yes.

A. I am sorry?

Q. Do you recall writing this document?

A. I have no present recollection, but I don't question that I did.

Q. Now, is this a document also dealing with a special account number 4 project?

A. I regret that that's not clear from the letter.

MR. LONG: I am sorry, did you say special account number --

MR. BSCHORR: 4.

A. That's not clear from the letter.

Q. Now, you indicated in a bc to Mr. Judge and Dr. Spears, quote, "I agreed with this project reluctantly, primarily because everyone else concurred -- and because in a special meeting of counsel on that date, I expressed serious questions concerning the quality of special projects

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generally."

Do you see that?

A. I do.

Q. What do you recall you discussed at the special meeting of counsel on that date with respect to your serious questions concerning the quality of special projects?

A. I have no specific recollection of the content of those discussions in 1981.

Q. Do you deny that at that time, in September 1981, you had serious questions concerning the quality of special projects generally and had expressed that to the committee?

A. No. In response to your questions, I testified earlier that from time to time I expressed concerns, so it would not surprise me that on the occasion reported in this note, I had done so.

Q. And this would be such an example, I take it?

A. It would, yes.

Q. When you say the quality of special projects, what did you have in mind?

A. Again, I don't remember specifically

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here, but, as I testified earlier, I have always wanted to make sure that we got the best people available doing work that was credible and understandable and knowledgeable and current and of value.

Q. Would independence of the research be an important factor there?

A. Always.

Q. And I take it from time to time -- and this being an example, Exhibit 21 -- you found that the quality of the special projects were not measuring up to your standard, correct?

MR. LONG: Object to the form of the question.

Q. Is that correct?

A. From time to time, in my judgment, I thought the quality could be improved and it was always my objective to continue to push for the best quality available.

Q. Let me show you another document marked Exhibit 22, which is a memorandum from, this time, Mr. Spears to you, Mr. Stevens, dated December 10, 1980.

(Stevens Exhibit 22, memorandum dated

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December 10, 1980 from Mr. Spears to Mr. Stevens, marked for identification, as of this date.)

Q. Do you recall getting that document from Mr. Spears?

A. I have no independent recollection, but I don't --

Q. Now, in December 1980 --

A. May I finish?

Q. I am sorry.

A. I have no independent recollection of getting it, but my assumption is that I received it.

Q. I am sorry for interrupting you.

December 10, 1980, Dr. -- is it Dr. Spears?

A. Yes.

Q. What was his position in the company at that point, do you recall?

A. As best I recall, he was probably the head of research and development.

Q. So you would have received this memorandum from him, understanding that that was his capacity in which he was writing this, correct?

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MR. LONG: Object to the form of the question.

A. His responsibilities included supervision of research and development. He was writing to me, I would imagine, in response to my request for his commentary. It was my practice to review special project and probably special account 4 -- no, I just think special project proposals with Dr. Spears so that I could get the benefit of his views.

So I am distinguishing between his role as head of research and development and his being, in effect, a scientific adviser to me. He has always been the principal scientific voice in the company, and his positions with respect to scientific issues have been the Lorillard positions then and now.

Q. From your previous answer, am I correct that you would believe that this proposal of Mr. Puglia and Mr. Roberts or Drs. Puglia and Roberts would relate to a CTR special project?

A. Again, there is no title, so I don't know if it was a special project, a CTR special project or whether it was a special account 4, but

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it would be either one or the other.

Q. I thought you said you would not be reviewing special account 4 with Mr. Spears or Dr. Spears.

A. Therefore, I suspect this was a special project, CTR special project, yes.

Q. Do you recall taking any action with respect to the last paragraph of his memorandum to you with respect to this project?

A. Subject to seeing further documents which might indicate that I communicated back to whoever it was, Pat Sirridge, I don't know until I can make that connection. It would not have been unusual for me then to have been getting back to Sirridge with our agreement to participate or not.

Q. Going back to the CTR special project category --

A. Yes.

Q. -- is that a project that related to litigation, as opposed to the special account number 4 project?

A. I believe I testified that CTR special projects were also designed to produce information for use by counsel in litigation, but not

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necessarily to -- not necessarily, but not to -- not to have it embrace such privilege as might be available. I believe that was my testimony.

Q. In other words, the projects in the CTR special project category, as I think you said before, would be made available, would be disclosed, would be published at the appropriate time by the independent researcher, correct?

A. I believe that's the case.

Q. Were all of the tobacco companies involved in the CTR at all times during your tenure at Lorillard?

MR. LONG: You mean the cigarette manufacturers?

MR. BSCHORR: Yes.

A. When you say CTR, you mean, as members of CTR?

Q. Yes.

A. No.

Q. There was one that was not, Liggett?

A. That's correct.

Q. Liggett was there for a short period of time?

A. Perhaps prior to 1969.

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Q. Certainly during your tenure, they were not a member of CTR?

A. That's my best recollection.

Q. Were they funding special projects of CTR?

A. Yes, they -- yes. My hesitation is I don't know whether they funded all, but, yes, they funded some.

Q. Perhaps you can explain to me how that worked, if they were not a member of CTR how they funded special projects from time to time. How would that work?

A. Because I described earlier, that CTR special projects were not part and parcel of CTR grants or contracts, CTR activities.

Q. I understand that, but how would Liggett be involved in CTR special projects if they were not a member of the CTR?

A. They didn't have to be a member of CTR, because CTR special projects were separate and apart from the grant and contracted research activity conducted by CTR.

Q. Was Liggett a member of the Committee of Counsel?

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Stevens

A. Yes.

Q. And it was the Committee of Counsel that really worked with outside counsel on the CTR special projects, correct?

A. Yes.

MR. LONG: Objection to the form of the question.

MR. BSCHORR: On what basis?

MR. LONG: Mischaracterizes his testimony.

MR. BSCHORR: He just said yes.

MR. LONG: It still mischaracterized his testimony. That was the qua stuff, remember?

MR. BSCHORR: We are back to qua again.

MR. LONG: We are back to qua. That was his testimony.

Q. With that modification, whether it was directly as the Committee of Counsel or qua committee or as an independent group, together, your answer is the same, I take it? Yes, sir? Can you answer that?

I just have to deal with your counsel's

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Stevens

objection.

A. So do I.

Q. I know.

Can I have an answer to my question?

A. I am going to have to hear the question again, please.

Q. Whether we talk about the Committee of Counsel, qua committee or as a collection of individuals, am I correct that Liggett was part of that group?

A. Yes.

Q. Let me mark as the next exhibit, a memorandum by you, sir, dated 3/16/78 entitled Privileged/Confidential, Attorney Work Product, Council for Tobacco Research."

(Stevens Exhibit 23, memorandum from Mr. Stevens dated March 16, 1978 re Council for Tobacco Research, marked for identification, as of this date.)

MR. LONG: For the record, I object to the use of this document and questions about this document on the grounds of privilege and attorney work product.

Q. Do you recall writing this document,

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sir?

A. I have no present recollection of writing it, but I don't question that I did write it.

Q. Now, in the second paragraph, could you read that into the record, what you say there?

A. The first page, second paragraph?

Q. Yes, sir.

A. "Question whether CTR can be said to be independent when it is conducting its own proposed research through contracts rather than through grants."

Q. What did you mean by stating that?

A. It relates to the first paragraph and having reviewed this memo, a separate recollection I have of it was an attempt to put down in one place the then current status of the various companies' attitudes towards CTR, and I take the second paragraph to mean that one or more companies were questioning whether CTR could be said to be independent when it was conducting its own proposed research through contracts rather than through grants.

Q. What is the difference between a grant

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and a contract, as you understood it?

A. A grant is where the researcher generally applies to the funding institution and says, I propose to do the following research of this specific subject pursuant to these terms, under this budget for this period of time, hoping to answer such issue or address such issue, and most of the CTR work was done through grants. Proposed grantees would apply to the CTR or they would respond to invitations that I think the CTR issued for grant applications.

Contracts, which were far fewer in number, were generally of a larger scale enterprise and were undertaken generally by multiple contractors or larger institutions with larger facilities and were somewhat broader in scope as to subject. They may have been, and I am sure there were other distinctions, but those are primarily the distinctions.

Q. Do you recall, at approximately that time, there was any concern as to whether or not CTR was being limited in any way in the type of research that it was undertaking?

A. I think this memo reflects a variety of

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concerns on the part of various members of the industry as to what CTR was doing and how it was doing and how it could do things differently or better, and that was a subject, in my experience, throughout 29 very active years in the industry, constantly reoccurred.

Q. And specifically -- I am sorry.

A. Various members of the industry, in the form of the companies, were never completely satisfied with how CTR functioned, what it did, what it didn't do. It was a constant source of -- the subject was constantly being addressed, whether it could do it differently, whether it could do it better, whether it was being perceived as independent, whether it wasn't. It was a constant effort to make it a better organization.

Q. But do you recall specifically that there were discussions on or around that time, in 1978, with respect to whether or not CTR was being limited in any way as to what research it undertook?

A. Can you take me to anyplace in this memo where I address that issue? That would help me.

Q. If you look at the bottom of page 3, you

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might tell me in that connection who Mr. Yeaman was at that point and what his role was.

A. Well, I will answer your pending question first.

Q. Okay.

A. Yes, there were concerns about whether CTR was -- I mean, you could interpret my report of Yeaman's statement of whether CTR was being limited in any way. I think his statement meant more than that.

Mr. Yeaman was, at that time, I think, the president and chief operating officer of the Council for Tobacco Research.

Q. Do you recall sharing his view that there were efforts to limit the research that CTR went into?

A. I have no present recollection of sharing that view and I don't know that I ever had that.

Q. On page 3, just above the statement headed "Yeaman Statement," there is the sentence "Does industry still want/need independent objective SAB and staff?"

Is that a view that you shared or was

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that just a reporting that you gave?

A. Again, I want to point out that when I reread this memo and refreshed my recollection of it yesterday, I take this to have been an attempt on my part to summarize and report succinctly in one place what the current status of industry attitudes were towards the CTR.

Q. And as a result of those discussions, did anything change in the CTR?

MR. LONG: I object to the form of the question. Overly broad and vague.

A. I don't remember whether specific changes took place. The basic operation of CTR, I don't think changed dramatically over the years. It funded outside independent research through independent grantees.

Q. And the issue of whether or not there were limits on its research was always there as a discussion item?

A. No, I don't think so. I don't think it was a constant issue. It arose from time to time, but I don't think our company was ever concerned that the CTR was limited. The CTR -- the scientific advisory board had a broad mandate and

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fulfilled it.

Q. Do you have a recollection of learning about a report, something called the Standing Scientific Liaison Committee in Great Britain?

A. I didn't prior to yesterday, when I saw a document that refreshed my recollection. That was one I have very little recollection.

MR. LONG: Before we jump into this, I don't know if we are on tape or --

MR. BSCHORR: Do you want to stop?

THE VIDEOGRAPHER: The time is 2:45 p.m. This completes tape number 2 of the videotaped deposition of Arthur Stevens.

(Recess taken.)

THE VIDEOGRAPHER: The time is 3:00 p.m. This is tape number 3 of the videotaped deposition of Mr. Arthur Stevens.

BY MR. BSCHORR:

Q. Mr. Stevens, on the break, we blew up a copy of Exhibit 11 -- blew up means expanded, as opposed to some other definition of those words -- and I have a magnifying glass there for you. I was just wondering if you could make out your handwriting with the aid of the blown-up copy, as

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well as the magnifying glass.

A. I am sorry, I cannot. I cannot.

Q. That doesn't help with --

A. No, sir, it doesn't.

Q. -- the expanded copy?

A. No, sir.

MR. BSCHORR: Why don't we mark as Exhibit 11-A, this additional copy, which is expanded.

MR. LONG: Which is claimed to be an expanded copy.

MR. BSCHORR: It is claimed to be an expanded copy of a portion of the document.

MR. LONG: Yes.

MR. BSCHORR: If you have anything to indicates to the contrary, I am sure you will let me know.

MR. LONG: Yes.

(Stevens Exhibit 11-A, expanded copy of portion of previously marked Stevens Exhibit 11, marked for identification, as of this date.)

Q. We were just about to mark as Exhibit 24 a memorandum three pages in length from Mr. Stevens

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to Messrs. Judge, Pollack and Orcutt dated May 15, 1972.

(Stevens Exhibit 24, letter dated May 15, 1972 from Messrs. Gastman and Stevens to Messrs. Judge, Pollack and Orcutt, marked for identification, as of this date.)

MR. LONG: For the record, I object to the use of Exhibit number 24 and questions about Exhibit 24 on the grounds of attorney-client privilege and work product.

Q. Do you recall this document, sir?

A. I did not before seeing it yesterday and reviewing it today, and I have no independent recollection of it.

Q. But seeing it yesterday or today, does it in any way refresh your recollection concerning the topic that is being discussed, i.e., the report of the Standing Scientific Liaison Committee of Great Britain?

A. To a degree, it does.

Q. What do you recall about that committee report?

A. That on or about the time, May of '72, this committee in Great Britain was either getting

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ready to publish or had under consideration various aspects of smoking and health. I would acquaint it roughly -- and this is inexact, but somewhat to the Surgeon General's report or something of that nature, that it was getting ready to consider and release such a report and I think was seeking submissions from interested parties.

Q. Do you know whether the report was ever subsequently issued?

A. I do not know.

Q. Did Lorillard take any steps to effect the publication of that report?

A. It's not clear to me that they did.

Q. It's not clear to you from reading this memo or from some independent recollection?

A. It's not clear to me from this memo and I have no independent recollection.

Q. Now, you see in the first paragraph that the report apparently stated, quote, "Positively that there is a causal connection between tar and nicotine and lung cancer" --

A. I see that.

Q. -- "and cardiovascular disease and emphysema."

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Do you see that?

A. Yes, I see the reference.

Q. You also see that it goes on to say "The report also adopts the theory that cigarette smoking is addictive"?

A. I see that.

Q. These were positions that Lorillard did not agree with at that time; is that correct?

A. I don't know if that is completely correct. I think -- I don't know what Lorillard's position was on some of these issues during the sixties, because I wasn't there, but further to our -- I think by the seventies, even the early seventies, Lorillard recognized there was a risk association with respect to cigarettes, but I don't know that it ever -- I don't think it positively -- well, I am not answering the question.

Would you let me have the question again, please?

MR. BSCHORR: Could we have it read back, please?

(Record read.)

A. As I said, I think Lorillard realized there was an epidemiological and a risk association

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between cigarette smoking and some of the things mentioned here, but I don't think it ever took the position that it had positively been established yes or no that cigarette smoking caused these diseases.

Q. So, in other words --

A. And addiction was a whole other subject in 1972 than it is today.

Q. Let's stay with the causal connection words that you use in this letter or memorandum.

Your words, "causal connection between tar and nicotine, lung cancer, cardiovascular disease and emphysema."

A. Well, I am not -- my words in the sense I think Mr. Gastman and I were reporting on what we understood was going to be in the report.

Q. But you and Mr. Gastman jointly, at least, wrote this memo?

A. That is the best of my -- that's my assumption. As I say, I don't remember this. Mr. Gastman was then a lawyer on my staff.

Q. So you would have been the more senior of the two, as far as the responsibility for the accuracy of the memo?

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A. Yes.

Q. And you, therefore, used the words "causal connection between tar and nicotine" as what was being referred to as being reported by this committee in Great Britain, correct?

A. We were reporting what we understood the report to say.

Q. Right, right, and my question to you is, at that time, what was Lorillard's position on the issue of a causal connection between tar and nicotine and lung cancer, cardiovascular disease and emphysema?

A. I think Lorillard was of the position that it had not been scientifically established one way or another that there was a causal connection. They recognized that there was a risk association, but I don't think they ever denied that there was causal. They said it hadn't been scientifically established.

Q. Had Lorillard ever, in the 1970s issued a public statement acknowledging there was a risk association between smoking and disease?

A. A public statement unrelated to litigation?

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Stevens

Q. We will take that for the moment.

A. I don't know. I don't think so, but I don't know.

Q. Would that be true also for the 1980s?

A. I believe so.

Q. And the 1990s?

A. As I testified earlier, I am not -- I am less certain about the late 1990s --

Q. During the time that you were there.

A. I was there in the late nineties. I believe that's the case.

Q. Now, you qualified that, you said "except with respect to litigation." Do you believe such a public statement was made in connection with litigation?

A. Well, I -- we took positions in litigation. Whether you characterize those as public statements, I don't know, but --

Q. Well, did you ever, in litigation, take a position that there positively was a causal connection between tar and nicotine and lung cancer, cardiovascular disease and emphysema?

A. Well, I testified to that earlier and I thought I was referring to that now.

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My understanding is that in litigation, we recognized that cigarette smoking was a risk factor and I think we also stated that science had never positively established causal connection, but we couldn't say that it hadn't. I believe that was our position.

Q. And that, you think, was your position all the way through the sixties, seventies and eighties?

A. I believe so.

Q. Nineties?

A. I believe so.

Q. Do you believe that was the position of your fellow tobacco companies as well during that period of time?

A. Yes.

Q. So, in other words, the position that you were expressing was Lorillard's position was also the position of the other big tobacco companies?

MR. LONG: Objection to the form of the question. Lack of foundation.

MS. BERNSTEIN-GAETA: I join in that objection.

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Q. Can you answer the question?

A. I don't know.

Q. You don't know?

Did you ever actually attend any trials that Lorillard was a defendant in?

A. Yes.

Q. Were these trials that other tobacco companies were also defendants in?

A. Some.

Q. Do you recall any differences in presentation as to the issue of causation between smoking and disease taken by any of the tobacco companies?

MR. LONG: Object to the form of the question.

A. I do not recall differences.

Q. In fact, there are no differences that come to your mind, correct?

MR. LONG: Objection to the form of the question.

A. No, you asked if I remembered that the trials that I attended were --

Q. Right.

A. None come to mind.

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Q. Thank you.

Now, Mr. Yeaman, Addison Yeaman is referred to at the bottom of the first page. Is that the same Yeaman who subsequently went on to CTR?

A. Yes.

Q. And you indicate, you ascribe a statement to him that he found the report was in its final form and was not only extremely damaging as stated but was ascribed to by the industry's scientific members who participated in the development of the report.

Do you see that?

A. I do.

Q. Did you ever learn of any information to indicate that that statement about the industry in London was inaccurate?

A. I don't recall receiving any further information on that subject one way or another, sir.

Q. Okay, so that's the last state of your knowledge on that subject, I take it?

MR. LONG: You mean current knowledge?

MR. BSCHORR: Current knowledge.

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A. As far as I know.

Q. Do you know whether either the Tobacco Institute, the CTR or any tobacco company took any steps to see that this report was not published?

A. No. I know of no such steps.

Q. Do you recall any activities by either the Tobacco Institute, CTR or any of the tobacco companies to prepare a challenge to the report if it were published?

A. I have no recollection of that. I don't know whether they did or didn't.

Q. If you look at the second to last paragraph of this memorandum on page 3, does that refresh your recollection?

A. No. I mean, I see where it says that should the report be published, it must be challenged or at least responded to by the United States tobacco industry.

However, in response to your question, I don't know whether it was.

Q. Well, do you see the next sentence that they will be working together to formulate a response?

A. I see that.

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Q. And do you believe, sitting here today, that that is an inaccurate statement?

A. Excuse me, let me just look at the -- no, I don't know that it was inaccurate. It spoke of the prospect of -- I mean, it spoke with some certainty of the prospect, but I don't know whether it was issued.

MR. BSCHORR: Let's mark as Exhibit 25, Stevens Exhibit 25, three pages of handwritten notes dated 5/11/94 which seems to be headed "Review of Allinder of B&W documents."

(Stevens Exhibit 25, handwritten document bearing production Nos. 91817243 through 91817245, marked for identification, as of this date.)

MR. LONG: For the record, I object to the use of Exhibit number 25 and questions about Exhibit number 25 on the grounds of attorney-client privilege and work product doctrine.

Q. Do you recognize the handwriting on this document, sir?

A. Yes.

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Q. Whose is it?

A. Mine.

Q. What was your purpose in preparing this?

A. I don't recall the specific purpose. I don't know the purpose of preparing it.

Q. Do you know what B&W documents were being referred to?

A. Yes.

Q. What documents?

A. I believe they were the so-called Merrill Williams documents, the documents that had been publicly disclosed by Merrill Williams following -- that he obtained improperly in connection with his work as a paralegal for a B&W law firm, and I think this is -- I think this relates to those documents.

Q. Am I correct from reading this, these set of notes, that Mr. Allinder had been in the process of reviewing these documents at the time he met with you on this?

A. I believe Mr. Allinder had seen the documents or had had them described to him, I am not sure which.

Q. Was this a face-to-face meeting with

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Mr. Allinder?

A. I don't recall whether it was face-to-face or over the telephone.

Q. I have a little trouble reading some of the words, so if you will bear with me and maybe work with me here, the third line begin "They date back to 1954," I believe. Is that right?

A. Yes.

Q. And then I cannot quite read the rest of that line.

A. "Will open many doors to many issues."

Q. What did you mean by that?

A. Again, I am trying to best recall what I wrote six years ago.

I take that to mean that some of the B&W documents went back, at that point, some 40 years, and that they would discuss many issues. I can't -- I mean, the words don't mean anything more to me than that.

Q. The next bullet point begins "Research by B&W."

Do you see that?

A. Yes.

Q. Can you read the whole thing in the

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record so we have it, please?

A. "Research by B&W, BAT-related companies, some of it overseas. BAT conducted the work for all of its subsidiaries; some of the subsidiaries may have contributed to payment for the work. There was an agreement between B&W and BAT intended to insulate BAT. European scientists and companies were not careful about what they said. Some of the language they used was unfortunate."

Q. Now, this, again, would have been something that Mr. Allinder was reporting to you based on his review of these documents?

A. As best I can reconstruct, he was summarizing for me what some of the B&W documents dealt with.

Q. And the next bullet, I believe, says "There are some useful documents"?

A. Yes.

Q. "Some are privileged; some are not"?

A. Yes.

Q. Then could you read the next bullet point, please.

A. "Among the most sensitive: Relating to

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a September '81 Committee of Counsel meeting re ingredient testing by K. Wells (Allinder trying to determine if any Lorillard documents from the 9/81 Committee of Counsel meeting). The discussion related to the preparation of the list for HHS and an external panel for toxicological tests. Northrip discusses litigation aspects. Wells reports on Northrup proposal, i.e., 'do testing in-house, so if bad'" --

Q. Results?

A. No. The caret in that line is intended to, I believe -- I am sorry, "Northrip proposal, i.e., 'do testing in-house so if bad results the ingredients can be removed and the data can be destroyed.' Included a direction not to maintain information."

Q. Was it your understanding in writing that particular bullet point that the quoted part was a quote from a document, one of the B&W documents?

A. Yes. Attributed to Ken Wells.

Q. And Mr. Wells was counsel, one of the in-house counsel at Brown & Williamson?

MR. CONLON: Object on the grounds of

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privilege.

MR. BSCHORR: To what, the question of whether or not he was counsel?

MR. CONLON: The question and answer before this.

MR. BSCHORR: A little bit late.

Q. Go ahead. Was Mr. Wells the in-house counsel at Brown & Williamson?

THE WITNESS: Should I answer?

MR. LONG: Yes.

A. Yes.

Q. The last part of that sentence says "Included a direction not to mention information." Is that correct?

A. Maintain.

Q. Maintain, thank you.

The next bullet, could you read that, please. It looks like "A 1978 letter by Shinn."

A. I see that.

I want to repeat for emphasis, the testimony that I gave in response to your last question, I understood that quote being attributed to Mr. Northrip by Mr. Wells. I do not understand from my own knowledge that Mr. Northrip said that.

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Q. I appreciate that. You are reporting on what Mr. Allinder --

A. I want the record abundantly clear on that.

Q. You're reporting, as I understand it, on what Mr. Allinder told you about his review of these documents, correct?

A. What Mr. Allinder I understood to be telling me was in some of these documents.

Q. Incidentally, just going back to that previous bullet point, HHS stands for what?

A. Health and Human Services.

Q. That's the government --

A. Yes, the entity at the government to whom the tobacco companies had the responsibility of submitting the list of ingredients used in the manufacture of their products.

Q. Now, if we can go to the bullet point beginning "A 1978 letter by Shinn" --

A. "A 1978 letter by Shinn: Re special account 4 special project proposals. 'No need to maintain notes.' In a letter to generals counsel" --

I am sorry, this is where the language

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below, "no need to retain notes" is supposed to include "after your consideration."

"In the letter to generals counsel, including Stevens, what Shinn really meant was: This is what you asked for, there is no need to retain earlier incomplete data."

Q. Okay. I am sorry to have to do this, but this is the only way I can read all of this, and I have you here, so if you could just keep right on going.

A. Do you want me to read the next quote?

Q. Yes, please.

MR. LONG: He is supposed to ask the questions.

MR. BSCHORR: Every once in a while we want to vary it a little bit, Gary. He is a lawyer, he is entitled.

MR. CONLON: Is there a question?

Q. Please read the next bullet point.

A. "Includes some bad marketing recommendations, but some are helpful because of B&W's rejection of the proposal, for example, a low nicotine delivery cigarette in order to maintain adequate nicotine level(?) Adopt Gori

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Stevens

standards(?)."

Q. Did you have any understanding what he meant by "adopt Gori standards"?

MR. CONLON: Objection.

A. I have no idea. That's why there is a question mark.

Q. And the next bullet point with the checkmark?

A. "RJR G-13 process: Pepples memo expressing reservations re RJR licensing to B&W re whether or not freon converts to produce phos" -- I don't know whether that is phosdene, phosgene or phosene; I can't even read my own handwriting. P-h-o-s, I guess -- I don't know what it is, perhaps p-h-o-s-d-e-n-e "gas in mainstream smoke."

Q. All right, and the next one?

A. "Pesticides: A 1965 report by Griffith of B&W (to English scientists?) Refers to a weak carcinogen."

Q. And the next bullet "Smokeless Tobacco Council"?

A. "Smokeless Tobacco Council reports of scientific research refers to 1970's CTR grant Vassell. Refers to meetings of STC at which

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Stevens was present, and Stevens letters regarding the nature and extent of Lorillard's support of research by the STC, e.g. status as 'a contributing nonmember.'"

Q. Let's just stop for a moment on that issue.

Do you recall any discussions or letters that you wrote concerning the involvement of the Smokeless Tobacco Council in CTR grantee activities?

A. No.

Q. So am I correct that when you were advised of this by Mr. Allinder, this came as a surprise to you that there should be such documentation?

MR. LONG: I object to the form of the question.

A. I don't recall having any reaction to the report of the content of the B&W materials in this regard.

Q. Do you recall discussing with Mr. Allinder anything about the fact that you didn't know anything about this?

A. No. I had no such discussion that I can

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recall.

Q. Do you want to read the next bullet point, please.

A. "Fall of 1985: Surgeon General's Advisory Committee on Smokeless Tobacco - re Smokeless Tobacco Council draft response and final response."

I am sorry, "re Smokeless Tobacco Council draft response and final response. One sentence deleted."

Q. Did you have any understanding of what the sentence was that was deleted?

A. I don't recall that I did.

Q. And the next bullet point?

A. "Pepples memo to Charles McCarty (CEO B&W) refers to a missing attachment re CTR of 9/29/78 - 'value of CTR statement' by Shinn. 'CTR was conceived as a PR organization. Keep health-related research out of the companies.'"

Q. That statement, I take it, was a statement that was in one of the documents that Mr. Allinder was reporting on?

MR. CONLON: Objection.

A. That's my recollection.

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Suggested citation: http://www.industrydocuments.ucsf.edu/docs/qpjl0001

Q. And the last bullet point on that page?

A. "Pepples memos regarding CTR activities of 1976-1978 relate to all of the issues of the day, for example, literature retrieval division, et cetera, CTR as a tool of the industry."

Q. Now, the last little clause or the last sentence, "CTR as a tool of the industry," can you tell whether that was added at some later point or was part of the writing that you did contemporaneously? It looks like the handwriting is slightly different. It is your handwriting.

A. It's my handwriting. I have no recollection it was added.

Q. You don't recall adding anything to this memorandum at a later time?

A. I do not, except for perhaps the last page, which seems to be with a different date.

Q. Okay. Now, the last page seems to relate to a different conversation with Mr. Allinder; is that right?

A. Correct.

Q. And that's dated May 20?

A. Correct.

Q. Could you read what is written there,

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please.

A. "Review with Allinder 5/20/94 Lorillard-Stevens 1977-78 letters re Addiction Research Foundation Palo Alto, California. Correspondence with Leonard Cornell on behalf of Leonard Goldstein, request and denial of funds for construction of a nicotine laboratory 11/77. 8/78 AJS to Cornell, 9/78 Cornell to AJS, carbon copies to generals counsel letter by Shinn."

Q. What do those last references refer to, as you understood it?

A. I have no idea. I have no recollection. I am sorry, when you say the last references --

Q. The AJS to Cornell and -- do you know what that refers to?

A. It sounds like citations to dates of correspondence.

Q. And the AJS would you, sir?

A. I assume so.

Q. And Cornell to AJS would also be coming back to you?

A. Sounds that way.

Q. Do you recall any other conversations with Mr. Allinder on that subject?

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A. No, sir.

Q. Did you take any steps as a result of the conversation you had with Mr. Allinder on the subject?

MR. LONG: Object to the form of the question.

Q. Did you do anything in your capacity as general counsel?

A. I don't recall.

Q. It's only six years ago. You have no recollection? Only six years ago.

A. I don't recall.

Q. Do you recall, sitting here, when Mr. Tisch testified in Congress in 1994, what date that was?

MR. LONG: Sitting where?

A. You said sitting here.

Q. Sitting here, yeah, in 1994.

MR. LONG: In this room?

MR. BSCHORR: No, no, I am sorry.

Q. Do you recall, sitting here today, when Mr. Tisch testified before Congress in 1994?

Sorry about that.

A. I think in March or April of 1994.

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Q. So that would have been before, presumably, this conversation with Mr. Allinder?

A. I believe so. I mean, the date that Mr. Tisch testified is determinative and certain, but I think it was before.

Q. Did you ever turn these notes into a formal memorandum?

A. Not to my knowledge.

Q. Did you ever report the conversation you had with Mr. Allinder to anyone else at Lorillard?

A. Well, earlier you asked me what I did with these and I said I don't recall. I may have.

Q. Who was the chief executive, then, Mr. Tisch? He only testified a few months before, unless he left.

A. No, he was the --

Q. And he was the person you reported directly to?

A. Yes.

Q. You have no recollection of meeting with him on this subject?

A. I do not.

Q. Do you recall any discussions at the Committee of Counsel relative to this topic?

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Stevens

MR. LONG: That's a yes or no.

Q. Yes or no. I don't want to know what you did.

A. No.

Q. No?

A. I do not.

Q. You do not remember or you do not believe you did?

A. I do not believe I did.

Q. And I take it, just to be complete on that, that that means that you don't recall participating in a meeting when anyone else at the Committee of Counsel had such a discussion, even though you may not have said anything?

A. Oh, that's correct. I do not recall any such discussion.

MR. BSCHORR: Let me mark as Exhibit 26 a two-page document which is headed at the top "Records for Storage at Lancaster Leaf Department." It has a date of April 24, 1972, two pages.

(Stevens Exhibit 26, two-page document headed "Records for Storage at Lancaster Leaf Department," marked for identification,

http://legacy.library.ucsf.edu/tid/ctr07a00/pdf Stored at http://www.industrydocuments.ucsf.edu/docs/qpjl0001

as of this date.)

Q. Can you identify what that document is, sir?

A. Yes.

Q. What is it?

A. They are pages from what I call a log or a manifest of materials that went from the legal department files at one time or another to Lorillard storage, file storage.

Q. Now, there are various types of documents that are listed here. If you would refer to item 1, "A.D. Little Analysis - Smoking Study," was this a study that had been commissioned by the CTR?

A. Not to my knowledge.

Q. Do you know who commissioned the study?

A. No, I do not. I believe that that was a study that perhaps had been conducted by whom and under what circumstances, I do not -- long before I came with the company.

Q. Do you recall reviewing the A.D. Little analysis at some point?

A. I don't recall ever having seen it.

Q. What about item 4? It says,

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"CTR-Feinstein Special Project."

Now, a lot of the various categories we have talked about. Where does this one fit?

A. Without seeing the file, I don't know, but from its title, I would say it was a CTR special project.

Q. As opposed to a special account number 4 project?

A. As distinguished.

Q. So this is one that was prepared and could have been and was expected to be made public?

A. Again, without seeing the file and absolutely confirming, but, yes, if it was a CTR special project --

Q. There is some handwriting, and I don't know, is that your handwriting or not?

A. No, it is not.

Q. Can you read it? It says "Do not destroy. Call Mr. A.J. Stevens prior to initiating destruction request," I believe it says.

Do you agree with me?

A. That's what it says.

Q. Do you recognize the initials?

A. I do.

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Q. Whose are they?

A. I believe they are Hallie Jessup.

Q. Who is Hallie Jessup?

A. She was a Lorillard employee at one time, a custodian of records or in charge of records storage at Greensboro.

Q. Do you have any understand as to why she inserted that note on this document?

A. I believe I do.

Q. What is your understanding?

A. There came a time in 1992, I believe, when in order to be absolutely clear that such records as were required for other legal purposes, I instructed the records retention people that no files relating to CTR, irrespective of pre-prescribed destruction date were to be disposed of.

Q. That would be true of item 24 on the second page as well?

A. Yes. It may also have been true of other pages that are not here, the list of CTR material.

Q. As far as you know, those reports are still available and may well be in a Minnesota

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depository?

MR. BSCHORR: Is that right, Mr. Long, as far as you know?

MR. LONG: I think about everything on here is available.

MR. BSCHORR: Let me next mark as Stevens Exhibit 27 a single page letter from Mr. Stevens to Patrick Sirridge of Shook, Hardy & Bacon dated November 24, 1981.

(Stevens Exhibit 27, letter dated November 24, 1981 from Mr. Stevens to Mr. Sirridge, marked for identification, as of this date.)

Q. Do you recall writing this letter, sir?

A. Such recollection I have is refreshed by the letter. I don't deny that I wrote it.

Q. Is this another instance of your questioning some of the research that was being done?

A. I will read it and let you know, sir.

Yes, sir, it is.

Q. Can you tell from this letter --

A. I am sorry, would you repeat the last question?

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MR. BSCHORR: Could we have it read back, please?

(Record read.)

A. Let me answer the question, let me revise my answer and say it is another example of my making comments and suggestions to Mr. Sirridge and others about some aspects of CTR special project.

Q. And this is CTR special projects?

A. That's what the caption says. Therefore, I think that it was.

Q. Did there come a point in time when the law firm of Wachtell, Lipton represented Lorillard?

A. Although from time to time, over the years, they have represented Lorillard on many matters. I am trying not to put that in a particular time.

Q. Indeed, the Wachtell, Lipton firm does a lot of work for Loew's as well; is that right?

A. Yes.

Q. And CNA?

A. Perhaps. I hesitate because I am not certain whether it was CNA or subsidiaries of CNA.

Q. Let me mark as Exhibit 28 a two-page

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letter to you from a Mr. Herbert Wachtell dated April 21, 1992.

(Stevens Exhibit 28, letter dated April 21, 1992 from Mr. Wachtell to Mr. Stevens, marked for identification, as of this date.)

MR. LONG: For the record, I object to the use of this document in evidence and questions on this document on the basis of attorney-client privilege and work product doctrine.

Q. Do you recall receiving that document on or about the date it bears, sir?

A. Let me finish reading. I am familiar with the letter, but just let me finish reading it.

I am sorry, your question, sir?

Q. Do you recall receiving this document on or about the date that it bears?

A. I do.

Q. Was there a discussion at the Committee of Counsel concerning entering into a moratorium with respect to the funding of new special projects around that time?

A. I remember no such discussion.

Q. Do you recall any discussions with

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Mr. Wachtell concerning that subject?

A. Yes, sir.

Q. Do you recall any discussions concerning that subject with any individuals who comprised the Committee of Counsel?

MR. LONG: That's a yes or no.

A. I -- no.

Q. Is it fair to say that the only person you recall discussing the moratorium with was Mr. Wachtell?

A. And/or others in his firm, perhaps, and with Bill Allinder at Shook, Hardy & Bacon.

Q. Now, Mr. Wachtell refers to the fact that Lorillard is already observing the moratorium.

Do you see that?

A. Yes.

Q. When did Lorillard first begin to observe a moratorium with respect to CTR special projects?

A. If I recall correctly -- and I think I testified to this --

Q. I think you may have, but if you could just put it in.

A. -- earlier, I believe we stopped

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engaging in CTR special projects or special -- yes, CTR special projects, sometime in 1990.

Q. 1990?

A. Yes. It could have been '89, but --

Q. I thought you had actually put it a few years later, but whatever the record shows, it does show --

A. I may have testified '92, but this refreshes my recollection that it was earlier.

Q. Why did Lorillard, in 1989 or 1990, decide to have a moratorium with respect to CTR special projects?

MR. LONG: Objection. Wait a minute.

Mr. Stevens, if you can respond to that question without divulging communications on privileged matters with counsel, then you may respond. If not, I instruct you not to answer.

A. The company, along with others, was under investigation by the United States attorney in the Eastern District of New York with respect to assertions included in an opinion by Judge Sarokin in certain litigation before him.

Q. Is that the same grand jury that

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Mr. Wachtell is referring to?

A. Yes.

Q. We were talking about -- I thought you said a moment ago you said that your decision or the company's decision to enter into a moratorium began a few years before that.

A. The investigation that I am talking about, as I recall, began sometime -- well, I could have my dates wrong, but I think the investigation began sometime in '88, '89 or '90.

Q. Okay. Again, without invading the privilege, were there any other reasons other than the grand jury that led Lorillard to enter into a moratorium with respect to the CTR special projects?

MR. LONG: Unless it involves communications --

MR. BSCHORR: I said "except for."

A. Not that I can recall.

MR. LONG: Our interpretation might be different from what you meant so --

MR. BSCHORR: You and I can think alike if we put our heads together.

Q. After that incident in 1989 or 1990,

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when Lorillard determined to go into a moratorium mode with respect to CTR special projects, did there come a point subsequently where CTR special projects began again?

A. My recollection is that there came a -- there was a time where an occasion arose to consider the suspension of the moratorium with respect to either one or two CTR special projects.

Q. Did the other companies, the other tobacco companies, also go into a moratorium mode with respect to CTR special projects at the same time as Lorillard did?

A. I don't recall.

Q. Do you recall ever learning that at any time any of the other companies entered into such a moratorium?

A. I have no specific recollection of acquiring that knowledge.

Q. Let me mark for identification as Exhibit 29 a memorandum from Mr. Murphy to Mr. Wachtell -- and it's not at all clear to me whether you have ever seen it, and if not, you can so tell me -- dated April 28, 1992.

(Stevens Exhibit 29, letter dated April

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28, 1992 from Mr. Murphy to Mr. Wachtell, marked for identification, as of this date.)

MR. LONG: What number is this?

MR. BSCHORR: 28. I am sorry, 29.

MR. LONG: I object to the use of Exhibit number 29 and questioning about Exhibit 29 for the record on the grounds of attorney-client privilege and the work product doctrine.

Q. My first question, sir, may be very easy.

Did you ever see this before?

A. Yes.

Q. Did you see it on or about the date that it bears or just recently in connection with preparation or some other time?

A. I did not see it on or about the time of its issue date.

Q. When do you recall first seeing it?

A. I think I learned of it some time later, I don't know when, in connection with its surfacing in litigation, and then I asked to see it, and I don't recall when that was.

Q. In the second paragraph, there is a

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reference to funding through a Shook, Hardy special account. Is this -- can you tell whether this is a CTR special project or whether this is a special account 4 project?

A. I understood that to be the successor to special account 4.

Q. I guess we better find out what the successor to special account 4 is. What is that?

A. Well, as I recall, when the Shook, Hardy & Bacon firm took over the administration from Jacob Medinger of what had been special account 4, they redenominated it as Shook, Hardy special account. I believe that's correct.

Q. So that during the period of time that we see references to special account 4, it would be fair to say that that was an account operating under the auspices of the Jacob Medinger firm?

A. I believe so.

Q. And that to the extent we are looking at this account, special account, Shook, Hardy special account, that's the successor?

A. I believe so. I hope I'm right.

Q. Were either of those accounts impacted by the moratorium that you referred to before on

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the CTR special projects?

A. I believe so. It would seem to me that the question raised in this menu -- in this menu -- in this memo suggests that we considered the moratorium as extending to that as well, but I am not certain about it.

Q. Do you recall how this memorandum actually came to your attention?

A. I think I testified a few minutes ago that I heard about -- I had heard it referred to either in some other litigation or in a press report and then I asked to see it.

Q. From counsel, presumably?

A. Oh, yes.

Q. And other than any conversations you might have had with counsel concerning the document, which I am not interested in inquiring of, do you recall discussing this document with anyone else?

A. I did not discuss it with anyone else.

Q. And that would be true, I take it, of the specific contents in the last paragraph of a memorandum; you did not, other than possibly with counsel, discuss the contents of that paragraph

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with anyone else?

A. That's correct, I did not.

Q. Do you recall whether or not Lorillard went forward with the project concerning Bennett Jensen?

A. I don't recall the outcome of this.

Q. Well, independent of this memo, do you recall, back in 1992, anything with respect to a pathologist named Bennett Jensen from Georgetown?

A. Not other than as has refreshed my recollection from this memo. I know that he had been a past grantee of, from the special account, but, no, beyond that, I don't know.

Q. Has he actually done research for this group?

A. I don't recall whether he had done research, whether he was a consultant, whether he reviewed literature. I don't know.

MR. BSCHORR: Let's mark as Exhibit 30 a multipage document which is entitled "Table of Contents," and the first heading of the table of contents is "Organization and Function of CTR."

(Stevens Exhibit 30, multipage

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document headed "Table of Contents," marked for identification, as of this date.)

MR. LONG: Give me a second. I need to talk to one of the counsel here.

THE VIDEOGRAPHER: The time is 3:53 p.m. and we are going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 4:02 p.m. and we are back on the record.

Q. Mr. Stevens, I have shown you Exhibit 30 --

MR. LONG: Let me interpose.

MR. BSCHORR: Let me just do a question and then you can interpose.

MR. LONG: Well, maybe I won't.

Go ahead.

MR. BSCHORR: I recognize this is a document that comes off the Internet, and so my questions are going to relate to the substance of the document, not to the format in which it appears here as Exhibit 30.

With that, Mr. Long, do you have something you wish to say?

MR. LONG: Yes. Apparently neither

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any of the defense counsel nor plaintiffs' counsel at the table know exactly what this document is, who authored it, anything of that nature.

It has no Bates number production, it is obviously a print-out off of some Web page. So out of an abundance of caution, I am going to object to the use of the document on the grounds that it may, in fact, be work product of some sort that neither side really is in a position to know at this point in time.

I may have some questioning on it, depending upon the nature of the questions and whether I think it delves into probing areas of what Mr. Stevens' knowledge of work product issues may be.

With that said, go head.

MS. BERNSTEIN-GAETA: I would like to add the objection that the document is incomplete. It indicates that at least there is a page 45 and it stops at page 35.

MR. CONLON: I, too, would object to this for all of the reasons stated and I

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think it would be improvident to question on this document given the objections that have been raised with it and I would urge that there be no questioning at least until we figure out what the document is. I think, in fairness, that should be done.

MR. BSCHORR: Well, the choice of doing it that way means if I am right and you are wrong, that means that Mr. Stevens has to come back again.

MR. CONLON: Well, I don't know that he would have to come back again.

MR. BSCHORR: I don't have many questions on this. Why don't we see where we go?

Is that all right with you, Mr. Long?

MR. CONLON: I maintain my objection to it.

MS. BERNSTEIN-GAETA: I, too.

MR. CONLON: I think my course would be a better course, Mr. Bschorr, in all fairness, but I don't control this proceeding.

Q. Mr. Stevens, if you will, turn to page

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25 of this document.

A. So we are on the same page, the top of the document, page 27 of 38?

Q. That's right, page 27 of 38 of the document. Page 25 of the document itself.

You will see there are a number of line items of the budget going all the way back to 1954 for CTR projects.

Do you see that?

MR. LONG: Before he answers the question, the terms -- I object to the question on the basis of foundation as well.

I will just ask the witness, do you know what this document is?

MR. BSCHORR: Fair enough, why don't we try that.

Q. Do you know what this document is?

A. I have no idea.

Q. You have no idea, all right.

Do you have any recollection of whether special projects funds were included in the budget for CTR?

A. Yes, I have a recollection.

Q. What is your recollection?

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A. They were not.

Q. They were not.

Do you have any understanding of what a literature retrieval fund is?

A. I do.

Q. What is a literature retrieval fund?

A. The literature retrieval fund, at the time that it was administered financially and administratively by the Council for Tobacco Research, was a computer function organization whose purpose was to collect, compile, be able to retrieve and furnish to litigation counsel information for their use in product liability litigation. That was its purpose.

Q. And how many years did that litigation -- what is it called again? I am sorry, I will find it -- the literature retrieval fund operate?

A. I can't be precise with respect to dates. It existed in one form or another for many, many years throughout my tenure in the industry. For a number of years, as I say, it was administered, I believe, by the Council for Tobacco Research, and then at some point -- and I don't

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know exactly which year -- it was removed from the administration of CTR and operated independently. I mean, apart from administration by CTR.

Q. Was it operated then by one of the outside law firms?

A. It was operated under the direction of a number of the law firms.

Q. Am I correct that this fund or this litigation retrieval fund had its purpose the collection of scientific materials and catalogs them in some sort of a computer format?

MR. CONLON: To the extent you are using that document that we have marked, Mr. Bschorr, again, I object.

A. As I testified earlier, it was a computer operation. I am struggling to find a better word. It was an organization whose purpose was to have computer collection retrieval capability with respect to a whole host of information that could be used by litigation counsel.

Q. That was separately funded by the various companies?

MR. CONLON: I object.

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A. At what time, sir?

Q. At the time that it was under the aegis of the CTR.

MR. CONLON: I object.

MR. LONG: I object to the term "aegis."

MR. BSCHORR: Umbrella, would you like that?

MR. LONG: Building.

MR. BSCHORR: Building?

A. I don't remember the details of how the budgeting for the literature retrieval division was part of or separate of or separately identified. I do know that the funds were administered through CTR and some fiscal responsibility and disbursement aspects were through CTR, but as I sit here now, I can't describe the various budget processes.

MR. BSCHORR: Let me mark for identification as Exhibit 31 a letter -- and it's unfortunately very hard to read pages of it, and we may have to get a better copy, but a letter from Mr. Decker to Mr. Greer dated September 18, 1981, which contains notes of a meeting of the committee of

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general counsel on September 10, 1981.

(Stevens Exhibit 31, documents bearing production Nos. LG 2000741 through LG 2000750, marked for identification, as of this date.)

MR. LONG: I object to the use of this document and questions concerning this document for the record on the grounds of attorney-client privilege and the work product doctrine and joint defense doctrine as well.

Q. I only have a couple of questions on this document, Mr. Stevens.

With respect to the attachment, which are notes of a meeting on September 10, 1981, do you see the references to your name or the name Stevens?

A. I do.

Q. Do you have any reason to believe that that does not refer to you as being present and making the remarks that are ascribed to you there?

A. With respect to the former, it certainly properly identifies me as being present. With respect to the attribution of remarks, you will

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have to take me to the remarks, I will have to look at them and give you my best recollection of whether or not they are accurate, if I can.

Q. Fair enough.

Take the first page of the notes. At the bottom of the page, there is a reference to Stevens, it says, "It is timely to reexamine the special projects," et cetera.

A. I am reading it, sir.

The question, sir?

Q. Do you have any reason to believe that the information ascribed next to your name there is not an accurate recital of the position you took at that meeting?

A. I have no specific recollection, but I have no reason to believe that it's inaccurate.

Q. The second page, if you go down a little further, there is a reference to Stevens and then there is another reference at the bottom of the page.

Could you look at both of those, and my same question is, do you have any reason to believe that the information set forth next to your name did not represent the contents of your conversation

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Stevens

at that meeting?

A. Mr. Bschorr, I am having trouble reading the continuation on the next page.

Q. I am, too.

A. Let's stay with page 20000744.

My answer is the same as it was to the previous question. I have no specific recollection. I have no -- I can't -- it certainly could be what I said. I would not have used the word "fulsome," because it is not in my vocabulary, but -- may I read the rest of it aloud to say what the -- I want to make sure we are reading the same thing.

"Also, it appears sometimes the project seems to be small at the start and then grows into a huge project in the future and no one tells me what to expect. I would like to have shorter projects which are narrower in scope. If it is a long-term project, I would like to decide that at the start and not get a year or two into it before I find we are" -- I can't make out the rest of it.

Q. Something "forever more."

A. Sounds like me.

Q. This is a kind of refrain you had

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expressed on a number of times, wasn't it?

A. Yes.

Q. If you go to the next entry on page 3, where relative to Mr. Stevens, to yourself, it says "Two other failures that concern" --

MR. LONG: Where is this?

A. No, no.

Q. Two other factors. I am sorry, "Two other factors that concern me."

A. I am sorry, respectfully, I don't know whether it says "two other" or "the other factors that concern me."

Q. Either way. I think it says "two," but go ahead.

A. "I need to know what the historical reasons were for the difference between the criteria for lawyers special projects and CTR special projects. I understand that there will be a time when we need to get money into the hands of a researcher like Janus, but I would rather not create a project that does not make any sense ('pseudo science')," and at the bottom --

Q. I am sorry, do you recall making that comment at that meeting?

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A. Again. I don't have specific recollection, but I would not -- I may well have.

Q. Leaving aside the specific meeting in question in 1991, do you recall at some point at a meeting of the committee raising the question of wanting to know the historical reasons for the difference between lawyers special projects and CTR special projects?

A. Are you asking me whether I raised that question before or after, other than at this meeting?

Q. At any time, whether --

A. I don't know.

Q. I take it the reference to lawyers special project is what we previously referred to as special account number 4?

A. Yes, sir.

Q. Do you see the last comment on that page?

A. It says "He took offense re scientific embarrassment to us but not to CTR." I don't know what that means. I am sorry.

Q. It's going to get worse with this writing, or with this type, but if you go to page

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4, could you read the middle of the page, where it says "Stevens"?

A. I will try.

"Use example of Dr. Evans' project. The work is similar to Eysenck. Why do we need to spend money to" --

MR. LONG: Duplicate?

A. It could say duplicate, it could say replicate, but I don't know. I can't make out the next two words. "Realize that we want to get money" -- I can't read it.

Q. It's very hard to read.

A. "We realize there are some criticisms of extrapolations work in one country to another country. Why not have" -- someone else -- "something else for people to do."

That paragraph makes no sense to me. I am sorry.

Q. And next, at the bottom of the page --

A. Again, I would like to point out that these are remarks being attributed to me by someone else.

Q. I understand that, I understand that.

A. "Stevens: He is worried about going

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down the road and not having a full discussion of the basis of the proposal. I" -- something -- oh, "I learn from full discussion."

Q. Just like you indicated before that the word "fulsome" wasn't yours, if you see anything as you read through here that really doesn't jog any memory as being your type of statement, please tell me.

A. That doesn't?

Q. That does not.

MR. LONG: You mean, when he mentioned fulsome, I think his point was that that was not a word that he uses. Are you making a distinction between words he uses or things he --

MR. BSCHORR: No.

Q. I am saying, as you read through this, if there is anything you see here that is attributable to you that you consciously recall was not accurately stated, please tell me. If you don't recall, so be it.

A. I told you that I don't have any specific recall.

Q. We are going through the specific words

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here.

MR. LONG: I object to your question just on the basis that it's one thing for him to pick out a word he wouldn't use. It is another thing, when he says he has no recollection, to ask him to say whether he, in fact, remembers saying that or not.

MR. BSCHORR: Well, fair enough. However, I am entitled to go through the specifics, and if there is something that jogs his memory, he will tell me, and if it doesn't, he will have done it.

MR. LONG: So the question is if he recalls -- just go ahead.

Q. Go ahead. Page 5, sir, we have another comment at the top, it says "Stevens: We need something, especially if the full story is not explained in the proposal"?

A. I think that's what it says.

Q. And then there's another reference further down, three down, "Stevens," it's very hard to read.

Can you read that? Does it say "concerned if the science is not worth a damn"?

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Stevens

A. I think that's what it says.

Q. Do you recall saying that?

A. I have no specific recollection of saying that.

Q. And then the next one is "I would like to have the ad hoc committee come to the Committee of Counsel"?

A. I have no idea what that means.

Q. What is the ad hoc committee?

A. I have no idea what it means there.

Q. The previous speaker, Mr. Witt, is referring to the ad hoc committee also. You have no idea what that ad hoc committee means?

A. No, I do not. I would be speculating or guessing. I don't know.

Q. And then the final line on that page, "Shinn is worried because he says it will be," and something, and it doesn't get picked up, I don't know where it is, so we are not going to know what that is.

The bottom of page 6, there is another reference to Mr. Stevens. Do you see that?

A. I do.

Q. Do you recall anything about the topic

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of a grant for side stream smoke and exposure of humans?

A. Let me read this, please.

Beyond what is written here, I have no recollection.

Q. You have no recollection, okay.

MR. BSCHORR: Let me mark as Exhibit 32 a memorandum from Dr. Spears to Mr. Judge and Mr. Stevens dated November 16, 1970.

(Stevens Exhibit 32, memorandum dated November 16, 1970 from Dr. Spears to Messrs. Judge and Stevens, marked for identification, as of this date.)

Q. Now, the subject of this memorandum is Dr. Auerbach's presentation before the tobacco working group, November 9 and 10, presumably 1970.

What is the tobacco working group?

A. May I just read the --

Q. Sure. I mean --

A. Well, I can -- let me glance through this, please.

Q. Fair enough.

A. I came to understand that the tobacco working group was a group formed under the auspices

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at that time of a forerunner of what was to become or what was already the National Cancer Institute in Washington under the auspices of the federal government. I believe it was a group that consisted of government representatives from various government agencies and functions, including some from the scientific and medical area and industry representatives.

Q. Did Lorillard have a representative on that tobacco working group?

A. My recollection is that Dr. Spears participated with the group. I am not sure whether he was a member.

Q. Do you recall his discussing with you this presentation by Dr. Auerbach in 1970?

A. I have no recollection of this memorandum.

Q. Do you recall any discussions with him, even though you may not remember the memorandum, on this subject?

A. I have no specific recollection of discussions with him but Dr. Auerbach's work was the subject of a good deal of conversation.

Q. You indicated before that Mr. Spears or

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Dr. Spears --

A. You didn't let me finish.

Q. I am sorry.

A. I said that Dr. Auerbach's presentation, I am sure, was the subject of a good deal of conversation between and among Mr. Judge, Dr. Spears and I, but I don't have a specific recollection of it.

Q. And Dr. Spears was at that time the head of the medical, of the research department; is that right?

A. Yes, he was.

Q. And he was a person who was, as far as his area of expertise, well-regarded in the company?

A. Was and continues to be.

Q. And continues to be. Indeed, I think you said before that he was, in a sense, and these are my words, not yours, but he was kind of the final answer within the company as to medical research and scientific research?

A. Well, if you will accept the amendment of medical, he is not a medical doctor, but with respect to smoking science-related matters,

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clearly.

Q. Now, at the bottom of the first page of this memorandum from Dr. Spears, he says, and I quote: "To the writer, the slides represented obvious lung pathology with increased cellular proliferation with smoke exposure."

Do you see that?

A. I do.

Q. Now, that is from a person who, you just indicated, was, in a sense, the last word on scientific research in the company, correct?

A. Yes.

Q. Did anybody at the company make any public statement to consumers or to the public concerning Mr. or Dr. Spears' views of Dr. Auerbach's presentation, as shown here?

A. Not that I recall.

Q. He goes on to say at the top of the second page, the end of the first paragraph, and he is now discussing his conversation with a clinical pathologist, a Dr. Berg, and he says, "If he had seen similar slides on patients, he would have ordered the lung removed."

Does that indicate to you that that was

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a cancerous lung?

MR. LONG: Objection to the form of the question. Calls for speculation.

A. I have no idea. I have no idea what Dr. Spears meant.

Q. You don't have any recollection of discussing that with him, do you?

A. I certainly do not have any such recollection.

Q. Do you recall whether Dr. Spears took any steps within the company with respect to the conclusions that he reached in this memorandum?

MR. LONG: Objection to the form of the question.

A. I do not know.

Q. Do you recall, just to clarify that one question that was objected to, do you recall that Dr. Spears took any steps within the company with respect to the contents of anything he wrote in his memorandum?

MR. LONG: Object to the form of the question.

A. I don't understand that question, I am sorry. Whether he took any steps with respect to

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the content?

Q. I thought the question was really based on the word "conclusion."

MR. LONG: No, it is steps.

A. I would refer to Dr. Spears on this issue. I do not remember the memo. I do not specifically remember discussions with him and I have no knowledge of what steps he took with respect to any of the content of the --

Q. And sitting here today, you have no knowledge of any steps he did take, correct?

A. I -- that's correct.

Q. Do you recall having had any discussions with anyone within Liggett -- within Lorillard, my apologies, concerning social costs of tobacco smoking?

A. During the course of reviewing documents for today's deposition, I saw some documents which reminded me that I apparently had served on an industry committee that dealt with that issue, and I believe I testified earlier with respect to the memo that Toti and I wrote reporting on the proceedings of the American Cancer Society with respect to that.

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So the answer to your question is I -- my recollection is refreshed that I had some activities. I have no recollection at the moment of what they are -- what they were.

MR. BSCHORR: Let me mark for identification as Exhibit 33, Stevens Exhibit 33, a three-page memo to Mr. Judge from Mr. Stevens dated November 24, 1970.

(Stevens Exhibit 33, memorandum dated November 24, 1970 from Mr. Stevens to Mr. Judge, marked for identification, as of this date.)

A. I have scanned the memo.

Q. Do you have any reason to believe you did not send that memo to Mr. Judge?

A. Excuse me, I had a question.

Is there a redaction at the bottom of page 2?

Q. There is, and that's the way the document was presented to us. I was going to ask about that.

MR. LONG: Is there a redaction in this document? I am just asking.

MR. BSCHORR: Yes, that's what it

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looks like to me.

MR. LONG: Oh, you said you were going to ask. I thought you said who is going to ask, and I would be willing to ask.

We will check. I have no idea.

MR. BSCHORR: To be fair, I don't know why there would have been a redaction and as far as I can tell --

A. It looks to me like careless copying.

REQ MR. BSCHORR: It may have been careless or what have you, but can you check on that and provide us with the full copy?

Q. The first page, Mr. Stevens, it refers to the annual meeting of CTR. Is this the annual meeting of the board or is this some other annual meeting?

A. I believe I testified earlier in response to your question that the CTR board of directors met twice a year.

Q. Correct.

A. One of those meetings, the December meeting, followed the annual meeting of the membership, which was a New York State, I think, corporate, not-for-profit requirement.

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Q. Now, did New York State require, as a part of the reporting requirements, that any sort of an annual report be submitted by CTR?

A. I don't know the answer to that question.

Q. Did you ever see an annual report?

A. CTR published what I understood to be an annual report which, among other things, included abstracts of the CTR grants that were published that year.

Q. Did that include CTR special project grants?

A. No.

Q. It did not?

A. No, it did not.

Q. Why did it not?

A. Because they were not part of the grant program of the CTR that I described, I think, in my earlier testimony.

Q. Was there any disclosure made in any of these public reports of the activities of the CTR special project?

A. I think I testified earlier that the CTR special projects always included a request and a

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requirement of the grantee that they publish their findings.

I think I also testified earlier, in response to your question, that I knew of no single publication of reporting on the publication of CTR grants.

If --

Q. My question is whether or not the annual report that would have been required by New York State relative to CTR would have made reference to the fact that there was something called the special project program of CTR.

MR. ZIRLIN: Object to the form.

Question.

A. I don't know.

Q. And I take it you don't recall discussions among the board of directors as to whether or not such disclosures should or should not be made?

A. There was no such discussion that I can recall.

Q. Was there an individual at the CTR who was responsible for the regulatory side of what documents should be reported to be in compliance

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with the State of New York?

A. The chief executive officer and secretary with the advice and assistance of CTR's counsel, I am sure, would have undertaken those responsibilities.

Q. And you left it to them to do that, I take it?

A. Yes.

REQ MR. BSCHORR: Mr. Long, if you can find the balance of that document, I would appreciate it.

MS. CLARK: We would ask if you also would check to make sure that you don't have the full document.

MR. BSCHORR: We will certainly do that, and if we do, we will acknowledge that.

MS. CLARK: Thank you.

MR. BSCHORR: Let me now mark as Stevens Exhibit 34, a two-page document --

THE WITNESS: I am just going to stretch while you do that.

MR. BSCHORR: Absolutely.

-- a document entitled "Scientific

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Research Liaison Committee," 4/21/78.

(Stevens Exhibit 34, handwritten document dated 4/21/78 headed "Scientific Research Liaison Committee," marked for identification, as of this date.)

Q. Do you recognize that handwriting, sir?

A. Just let me look at it more thoroughly, sir.

Yes, I do.

Q. Is that Mr. Judge's?

A. Yes, I believe so.

Q. Did he send a copy of this to you?

A. May I read it, sir?

Q. Sure, absolutely.

A. Sir?

Q. Did you ever get a copy of this from Mr. Judge?

A. I don't recall whether or not I did.

Q. Did he communicate the thoughts that are expressed in this memo to you?

A. I am certain he did.

Q. He was a pretty strong-willed individual, wasn't he?

A. He communicated --

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MR. LONG: Objection to the form of the question.

Q. He communicated --

A. He communicated his thoughts clearly.

Q. Do you recall his raising the concern that, quote, "We have again abdicated the scientific research directional management of the industry to the lawyers with virtually no involvement on the part of scientific or business management side of the business"?

A. I have seen this document before and that reference, so I am aware of it.

Q. Do you recall his stating that to you in words or substance?

A. I have no specific recollection of his sitting across and saying that to me. He may have.

Q. Is there any doubt that he did at some point say that to you?

MR. LONG: Objection to the form of the question.

A. I can't speculate to that, whether that's doubtful or not.

Q. What about the second point that he makes: "Lorillard's management is opposed to the

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total industry future being in the hands of the Committee of Counsel. It is reminiscent of late 1960s when Ramm's group ran the TI, CTR and everything else involved with industry's public posture."

Do you recall his discussing that concept with you?

A. Yes.

MR. LONG: If this is -- I am going to instruct the witness, if this was in terms of his seeking legal advice from you, then I would direct you not to answer. If it was merely discussion of issues not legal in nature, you may answer.

A. Then I can't answer.

Q. Do you recall his discussions with you in regard to your being a director of CTR?

A. No, I don't, and I hasten to point out, I am not certain that I was a director in 1978. I may have been, but -- he was, but I don't know that I was.

Q. Do you recall any steps taken by Lorillard with respect to the statements made by Mr. Judge in this memorandum?

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A. I would have to see other materials to understand the chronology of where this date fit in with what was an ongoing for some time policy consideration by the industry of all of its research-related activities. It was an ongoing activity, and I don't know where April 21, '78 fits in.

Q. In other words, this was a view that Mr. Judge expressed on more than one occasion?

MR. LONG: Object to the form of the question.

A. Yes.

Q. Would it be fair to say that he expressed it over a period of a number of years?

MR. LONG: Again, if you are -- you can say, you can give a yes or no on that.

A. Yes. Yes, in answer -- is it expression of concern --

Q. Yes.

A. Yes.

Q. Let me mark for identification -- wait a minute, hold on. I am just looking at the date of this.

Let's mark it anyway, mark it for

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identification as Exhibit 35, the document entitled "Report on Policy Aspects of the Smoking and Health Situation in the United States of America, U.S.A.," and I will tell you, Mr. Stevens, it is dated long before you joined the company and it may well be, as a result, you have never seen it, but it is something you might have seen afterwards, so let's find out. It is dated October 1964.

THE WITNESS: In the meantime, while that's being marked, I am just going to shift chairs for purposes of comfort.

(Stevens Exhibit 35, report entitled "Report on Policy Aspects of the Smoking and Health Situation in the United States of America, U.S.A.," dated October 1964, marked for identification, as of this date.)

Q. Let me just phrase the question and then you can take a look at the memo. I recognize this was dated some years before you join the company. But looking at it -- and please take as much time as you like -- do you recall ever reviewing this document subsequent to the time you came to Lorillard?

MR. LONG: I am sorry, I was distracted.

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Would you read that back?

(Record read.)

A. I don't believe I have ever seen this document.

Q. That was easy. Pass that one.

Let me mark for identification as Exhibit 36 a memorandum from Mr. Spears to Mr. Judge or Dr. Spears to Mr. Judge dated June 24, 1974.

(Stevens Exhibit 36, memorandum dated June 24, 1974 from Dr. Spears to Mr. Judge, marked for identification, as of this date.)

Q. Do you recall ever seeing this document before, sir?

A. Yes.

Q. Yes?

A. Yes, I am sorry.

Q. You believe you saw it on or about the time, the date that it's dated, June 24, 1974?

A. I have no recollection at this time of having seen it then. I have certainly seen it in connection with my preparation for this deposition and perhaps otherwise.

Q. Do you have any recollection of seeing

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it prior to your preparation?

A. No.

Q. If you will look at the third page of the document, sir, the last paragraph, which begins "Historically," would you just read that to yourself for a moment, please?

A. I will.

Q. Based on the information that you had available in 1974 with respect to CTR, do you believe that paragraph accurately sets forth the situation with CTR at the time?

MR. LONG: I object to the form of the question. It's not Mr. Stevens' document so --

MR. BSCHORR: I understand that. I am asking him whether, in reading that and giving his own understanding of what he understood about CTR at the time, he would agree that that is an accurate statement of the situation at that time or not.

MR. LONG: I object to the form of the question. Lack of foundation.

MR. BSCHORR: I appreciate that. I appreciate that.

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Q. You may answer the question.

A. Not being the author of the document or the paragraph in question, I really can't opine as to what Dr. Spears meant. I point out that his paragraph says "The joint industry-funded smoking and health research programs," and he then goes on to describe what I would consider to be all or many of the joint industry funded smoking and health research programs.

I did not, as I read it now, take his comments to be confined to CTR or any aspect of CTR, which I think was your question.

Q. Okay. It was my question, and that is a fair comment. So let us go to what you understood in reading that to mean.

"Joint industry funded smoking and health research programs have not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, et cetera."

Based on the information that you had available to you in 1974, is that an accurate description of joint industry funded smoking and

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health research programs?

MR. LONG: Same objection as before.

A. I believe that in 1974, I would have agreed with Dr. Spears' assertion of what the facts were at the time.

Q. If you look at the top of page 4, in the third full paragraph, it says, "In the past, and currently, the committee approach is in effect being used (Committee of Counsel). However, representatives of the committee generally lack the background to bring about scientific coordination and the time to bring about management coordination."

Do you see that?

A. I do.

Q. Based on the information you had available to you in June 1974, would you agree with that statement?

MR. LONG: Same objections. Lack of foundation and as to form.

A. I would like to take the time to read the two prior paragraphs because I think they are introductory to that paragraph.

Okay.

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Q. The two paragraphs you are referring to are "We see no way to coordinate without an organization and responsibility to coordinate"?

A. Yes.

Q. And the next paragraph, "The writer believes that only two mechanisms exist for this coordination: 1. A working committee of industry representatives, and 2. Appointment of one individual for that purpose with overall program and fiscal responsibility."

A. Yes. And I say that that is an introduction because the next line, the first line of the third paragraph says "In the past and currently the committee approach," I assume referring to the two previous paragraphs.

In any event, to answer your question, do I think that on the basis of the information that was available to me in 1975 I would have agreed with Dr. Spears' views?

Q. Yes.

A. I don't know that I would have completely agreed or disagreed. He was suggesting other ways to approach the industry's needs for research and the methods it was using to get

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research and he was a man whose opinions were well-respected and regarded, so I would have agreed with some of it and disagreed with some of it.

Q. Well, would you have agreed with the last sentence of that paragraph, "However, representatives of the committee generally lack the background to bring about scientific coordination and the time to bring about management coordination?"

A. No.

MR. LONG: Objection as to form.

Q. You would not agree with that?

A. No, I would not.

Q. What do you not agree with in that sentence?

A. That representatives of the committee lacked the background to bring about scientific coordination nor the time to bring about management coordination.

Q. You disagree with both scientific and management coordination?

A. It was my view -- and he was referring primarily to the Committee of Counsel -- that there were representatives on the committee who had

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sufficient background and who were devoting enough time to it.

Q. Who on the Committee of Counsel had sufficient background to bring about scientific coordination?

Were you one of those people?

A. Yes. I felt that members of the Committee of Counsel, including myself -- although I was not heavily experienced by 1974 -- knew enough about what I thought were the industry's scientific needs in relation to legal matters to be satisfied with what our outside counsel and others who were responsible for that work were doing.

Q. Was there anyone on the Committee of Counsel at that time who had a scientific background?

A. I don't recall.

Q. Well, we went through earlier today who was on the committee, and I believe you indicated they were all general counsels of the corporations and outside counsel.

A. That is correct, but with all due respect, sir, I don't know what their undergraduate or graduate degrees were, but they were lawyers,

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yes.

Q. How about Mr. Pepples, do you know if he had any scientific background?

A. I don't know.

Q. And Mr. Murray of Liggett?

A. I don't know.

Q. Mr. Witt of Reynolds?

A. I don't know.

Q. Mr. Holtzman of Philip Morris?

A. I don't know.

Q. Mr. Newman of Philip Morris?

A. I don't know.

Q. How about any of your lawyers at Shook, Hardy & Bacon, do you recall any of them having a scientific background?

A. Again, I am not, as I sit here now, familiar with each of their curriculum vitae.

Q. But in any event, sitting here today, nothing pops out at you as indicating that they did have such a scientific background; is that correct?

A. No, but I felt they were qualified to do the kinds of oversight and administrative and direction that we were asking them to do, remembering that the science and research and the

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consulting and the advice they were involved with was coming from people who had the scientific ability to do it.

Q. That was true of special projects at CTR as well as the general CTR?

A. I am addressing here special projects, sir. Yes.

Q. Were any of the -- let me just back up a minute.

CTR at that time in the 1970s, it had a full-time staff, did it not?

A. Yes.

Q. Was that staff made available to the Committee of Counsel for the purposes of any work with respect to special projects?

A. Special projects, before they were -- excuse me, CTR special projects?

Q. Yes. I am sorry.

A. In most instances, before they were presented to the generals counsel were reviewed by the lawyer who was handling it with the scientific director of CTR to see if the scientific director of CTR thought it had some scientific credibility.

Q. Was there then any decision made as to

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whether it would become a CTR research project as opposed to a CTR special project?

A. From time to time, there was that kind of consideration.

Q. And what considerations went into the difference?

MR. LONG: Could you go back two questions? I didn't pick up all of the words. I want to be sure of his question.

(Record read.)

MR. ZIRLIN: Object to the form of the question.

MR. LONG: Are you saying an SAB project as opposed to --

MR. BSCHORR: Yes.

MR. LONG: -- special project, okay.

Did you understand the question?

THE WITNESS: Yes, I did. I thought I answered it.

May I hear my answer?

MR. BSCHORR: Can we hear the answer?

(Record read.)

Q. What factors went into the consideration as to whether it should be a -- I am not sure,

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maybe that is not your answer. I think you said -- let's be sure.

A. I thought I gave a fuller answer. Maybe it is the question before, with all due respect.

MR. BSCHORR: Let's go back to be sure the witness has the whole thing.

(Record read.)

MR. BSCHORR: I think that's where we had our interruption.

Q. What considerations went into the difference?

A. The amount of work with respect to CTR grant applications that were on the plate at CTR, the funds that were available, the institution or the grantee who was going to do the work, the nature of the work, perhaps the methodology, a variety of subjects that would relate to whether it was an appropriate project, assuming there was time and funds available under the CTR grant budget to do it, which was a budget set two or three years ahead, factors of that sort.

Q. Well, would one of the factors been the nature of the research as to whether it was something that CTR wanted to put its name to, as

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opposed to leave on the side as special projects?

A. Well, there are connotations to put its name to -- I certainly think that the work that was to be undertaken or proposed would be of interest to CTR. Some would be of more interest, some would be of less.

Q. In any event, it is your testimony that representatives, full-time employees of CTR would be involved in this process of vetting these various projects; is that right?

A. Let's be sure we are talking about CTR special projects.

Q. That's correct.

A. And my testimony was that from time to time, I believe the lawyer presenting the proposed CTR special project would review it with the scientific director. I did not go beyond him in terms of CTR staff.

Q. Does that mean that from time to time, he would not review it as well?

A. No, I believe that universally, they did.

Q. Who was Mr. H.J. Minnemeyer?

A. Mr. Minnemeyer is a former Lorillard

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employee, now a retiree.

Q. I am sorry, what kind of employee?

A. Former Lorillard employee, now retiree. He worked in research and development.

Q. Did he work for Dr. Spears?

A. Whether he reported directly to him or not at a given time in his tenure, I don't know. He worked in R&D and Spears headed R&D.

MR. BSCHORR: Let's go off the record for a minute. I am just about finished, and I may even finish it in this session.

THE VIDEOGRAPHER: The time is 5:00 p.m. and we are going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 5:11 p.m. and we are back on the record.

BY MR. BSCHORR:

Q. Mr. Stevens, just a quick question on Exhibit 26, which I can actually show you here, this was the list of files that would go to storage?

A. Correct.

Q. You indicated that the handwritten notes were put on as a result of something in 1992, I

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believe, that indicated --

A. Yes.

Q. -- to you those documents were not to be destroyed?

A. And I misspoke. It was probably 1990.

Q. 1990?

A. Well, I testified subsequently in response to your questions as to when the moratorium went into effect and I described that I thought it was in '89 or '90, in the aftermath of the grand jury investigation. That would suggest to me that this notation was made in 1990.

Q. Okay, fair enough. Now let me just -- stay with this a minute.

It says at the top on the right-hand side, "three years April 1976."

Do you see that?

A. Yes.

Q. Do you have any understanding of what that reference means?

A. I think at one time or another it probably was the period of retention that was indicated for the documents, but I think that -- I think at some point almost all the documents or

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most documents were being kept in perpetuity.

Q. So in any event, your belief is that those documents in 1990 were still in existence and you indicated specifically that certain ones should be kept, correct?

A. Yes.

Q. Let me just show you two other documents. Exhibit 37 is a memorandum from a Mr. Minnemeyer to Dr. Spears dated June 16, 1976, and Exhibit 38 is a memorandum from Mr. Ireland to Mr. Minnemeyer dated July 16, 1976.

(Stevens Exhibit 37, memorandum dated June 16, 1976 from Dr. Minnemeyer to Dr. Spears, marked for identification, as of this date.)

(Stevens Exhibit 38, memorandum dated July 16, 1976 from Mr. Ireland to Dr. Minnemeyer, marked for identification, as of this date.)

Q. Do you recall seeing either of those two documents before your preparation for this deposition?

A. No, sir.

Q. Do you recall ever being advised that

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there were any efforts being made to change the pH content of nicotine?

A. I have no specific recollection of that.

Q. Do you recall ever being advised that, for example, Kent Golden Light cigarettes were treated with ammonia gas?

A. I have no specific recollection. I may have been. I don't know. I was not routinely advised of changes in product recipe or processes.

Q. Do you recall ever being advised that an approach was being undertaken for a solution to the problem of delivering more nicotine in the smoke of low-tar cigarettes?

And I am referring to Exhibit 37.

A. I am sorry, I --

Q. The first paragraph, were you ever advised that there were approaches that were being recognized as a possible solution to the problem of delivering more nicotine in the smoke of low-tar cigarettes?

A. No.

Q. Do you know what the problem was of delivering more nicotine in the smoke of low-tar cigarettes?

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MR. LONG: Object to the form.

Lack of foundation.

A. No, I do not.

Q. In any event, are you aware of any disclosures made by Lorillard with respect to any additives added to nicotine?

A. Additives --

Q. Additives.

MR. LONG: Object to the form of the question. Additives added to nicotine?

MR. BSCHORR: Any additives added to nicotine, correct.

A. Additives added to nicotine?

Q. Like ammonia.

A. Oh. I am sorry, am I aware of --

Q. Yes, any disclosures publicly made.

A. No, but, I mean, I don't know what was in the research literature published by Lorillard for the subject of patent applications initially or --

Q. Would that have been true of anything that might have been in the Kent filter?

A. Yes.

Q. Including the compound known as

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asbestos?

A. Is the question whether I knew there was asbestos --

Q. Were you aware of that?

A. I came to learn subsequent to my coming with the company that at one time in certain of the Kent cigarettes the micronite filter had an asbestos element. The product was on the market for a very short period of time, but, yes, I came to have that knowledge.

MR. BSCHORR: I have no further questions, sir. I thank you very much for your time and patience.

MR. LONG: How much tape do we have?

THE VIDEOGRAPHER: A minute and a half.

MR. LONG: Might as well put a new one in.

THE VIDEOGRAPHER: The time is 5:17 p.m. This completes tape number 3 of the videotaped deposition of Arthur Stevens.

(Discussion off the record.)

MR. LONG: Mr. Stevens, I just have a few questions, to clarify some things.

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THE VIDEOGRAPHER: The time is 5:21 p.m. This is tape number 4 of the videotaped deposition of Mr. Arthur Stevens.

EXAMINATION BY

MR. LONG:

Q. Mr. Stevens, I just have a few questions to try to clarify some areas that have been covered earlier today.

In terms of Lorillard's policies, positions on smoking and health issues, regardless of whether they are public policies or litigation positions, who sets those positions?

A. Dr. Spears.

Q. How long has that been true?

A. Since at least March 17, 1969, when I came to the company.

Q. And you are aware that Dr. Spears has testified frequently over the years in litigation and in depositions?

A. I am.

Q. And if there were differences of views on scientific positions between the testimony of others at Lorillard, including yourself and what Dr. Spears has said, which, according to your

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understanding, would be the position of Lorillard?

A. Clearly Dr. Spears' view and I would defer to his view.

Q. Are you aware of what Dr. Spears has said in recent depositions as to the issue of addiction, whether cigarette smoking is addictive?

A. I am.

Q. Would you tell us your understanding of what Dr. Spears has said?

A. My understanding is that Dr. Spears has distinguished between what I understand to be the pharmacological or scientific or technical definition of nicotine and what has come to be the common public definition, which is far less technical and which attributes to pleasurable, repetitive enjoyable activities an addictive quality which the technical pharmacological definition does not include but rather deals with intoxication and withdrawal and tolerance levels and lack of control.

Q. You were questioned earlier about a document concerning some California initiative, an excise tax to fund, among other things, education on smoking and health issues.

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Do you recall that testimony?

A. I do.

Q. I believe you said that Lorillard and the other companies opposed that legislation; is that correct?

A. We opposed the -- the proposal that was on the ballot issue, yes.

Q. Did you oppose it because it had something to do with smoking and health education?

A. No. The ballot measure involved raising taxes very substantially and designated the use of the taxes. What we were opposed to was the tax increase.

Q. There was some discussion earlier about documents concerning testing on ingredients for purposes of providing information to HHS.

Do you recall that?

A. I do.

Q. Did the companies in connection with providing ingredient lists to HHS, did they do an analysis of the ingredients in-house or did they do an analysis of the ingredients in conjunction with outside organizations?

A. All of the analysis was done by outside

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independent consultants.

Q. Why was that?

A. So that the independence and conclusions and findings of the experts would be coming from sources other than the tobacco companies and would be considered credible, independent.

Q. In connection with this analysis for HHS, do you have an understanding of what was required to be reported by the companies to HHS?

A. I believe the statutory and the regulatory requirement was ingredients used in the production of cigarettes.

Q. This would include all ingredients of any type that are added to cigarettes?

A. Added to tobacco, yes.

Q. Are required by law to be reported to Congress or HHS?

A. That's my understanding.

Q. Has Lorillard done testing on its ingredients in its laboratories?

A. Yes.

Q. How long has that been true?

A. As long as I can remember.

Q. Has Lorillard destroyed any of those

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documents?

A. No.

Q. Have any of those reports, any of that research been published?

A. Yes.

Q. Earlier, when Mr. Bschorr was questioning you, and I had objected at one point, and I wanted to try and see if I could get this clear. The issue was whether outside litigating lawyers would bring research proposals to the scientific director. Are you aware that sometimes that -- I think you testified -- tell me if this is correct. You testified that the lawyers would take proposed special projects to the scientific director; is that correct?

A. Proposed CTR special projects, yes.

Q. Are you aware of any -- do you have any personal knowledge of any discussions concerning that type of proposal brought by a lawyer to the scientific director as to whether that project should go before the SAB, as an SAB grant, or be a special project?

MR. BSCHORR: Objection.

A. No. My understanding is that when a

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lawyer brought a proposed CTR special project before the scientific director of CTR, he was looking for the CTR scientific director's appraisal estimate of the science and that if the CTR scientific director thought it had merit, then the lawyer would bring it to the attention of the companies. If he thought it did not, it was dropped. It did not go on to be considered by the SAB as a grant project, and if I testified otherwise, I was incorrect.

MR. BSCHORR: Please repeat that last answer.

(Record read.)

Q. Let me show you what's marked as Exhibit 36 and direct your attention to the last paragraph there, "Historically," and if you recall, that was a paragraph Mr. Bschorr asked you to read and asked you whether, something along the lines of based upon what you knew in 1970 -- is that date 4?

A. Yes.

Q. -- whether you agreed as to the status of industry research.

When you stated you agreed, was your agreement in terms of all industry research or

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certain facets of industry research?

A. I thought I pointed out in my testimony that the, Dr. Spears' memo says the joint industry-funded smoking and health research. I took that to mean anything other than CTR grants or CTR special projects. It was the institutional type of activity and other industry but did not include CTR special projects or CTR grants.

Q. That was the understanding you had when you answered the question?

A. I thought so, and I thought I pointed out in the colloquy with counsel that he was making clear that did not include any CTR activity. But if I can clarify it any further, I would be happy to try.

MR. LONG: Now I will turn it back over, because that's all I have.

BY MR. BSCHORR:

Q. Mr. Stevens, you just referred to the procedure with respect to projects being brought to CTR's research director --

A. Scientific director.

Q. -- scientific director, excuse me, and that was being brought to him to get his input on

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the value of that project, correct?

A. His consideration of it. Input -- his evaluation of it.

Q. His evaluation of it, all right.

And you said that if he found that it was not of value by whatever standard he applied --

A. Yes.

Q. -- it would be dropped?

A. That's my understanding.

Q. Are you aware of any instances where such a project did not meet the standards of the scientific director of CTR but nevertheless went forward as a CTR special project?

MR. LONG: I object.

A. No, that -- that's my testimony, that if he didn't approve it, it was not approved.

Q. As a special project?

A. The lawyer who was proposing it as a special project would drop it.

Q. Are there any occasions where the project moved under the umbrella of the special account number 4?

A. Not to my knowledge.

MR. BSCHORR: I have nothing further.

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Stevens

MR. LONG: I have nothing.

THE VIDEOGRAPHER: The time is 5:31 p.m. on March 30th, 2000. This completes the videotaped deposition of Mr. Arthur Stevens. This also completes tape number 4.

(Time noted: 5:31 p.m.)

_____

ARTHUR J. STEVENS

Subscribed and sworn to before me this ___ day of _____, 2000.

_____

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, CARY N. BIGELOW, RPR, a Notary Public within and for the State of New York, do hereby certify:

That ARTHUR J. STEVENS, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of April, 2000.

Cary N Bigelow

CARY N. BIGELOW, RPR

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3	Letter dated March 13, 1980 from Mr. Stevens to Mr. Kornegay	30
4	Letter dated November 5, 1979 from Mr. Stevens to Mr. Noha	35
5	Letter dated December 19, 1979 from Mr. Stevens to Mr. Judge	45
6	Letter dated November 26, 1979 from Mr. Shinn to Mr. Stevens	47

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8 Cover letter dated February 18, 1981 from Mr. Stevens to Mr. Hirsch with attached documents..... 51

9 Cover letter dated March 2, 1981 from Mr. Stevens to Mr. Shinn with attached document..... 77

10 Memorandum dated March 18, 1981 from Mr. Stevens to Mr. Judge..... 79

11 Handwritten document dated October 23, 1979, bearing production No. 92519670..... 88

12 Letter dated October 5, 1979 from Mr. Stevens to Mr. Seiler..... 93

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14 Letter dated November 6, 1979 from Mr. Kastenbaum to Mr. Stevens..... 124

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18 Memorandum dated February 13, 1984 from Mr. Mozingo to Mr. Ainsworth and others..... 140

19 Memorandum dictated November 23, 1981, dated September 10, 1981 from Mr. Stevens..... 163

20 Letter dated February 22, 1980 from Mr. Stevens to Mr. Finnegan..... 172

21 Letter dated September 11, 1981 from Mr. Stevens to Mr. Jacob..... 177

22 Memorandum dated December 10, 1980 from Mr. Spears to Mr. Stevens..... 180

23 Memorandum from Mr. Stevens dated March 16, 1978 re Council for Tobacco Research..187

11-A Expanded copy of portion of previously marked Stevens Exhibit 11..... 194

24 Letter dated May 15, 1972 from Messrs. Gastman and Stevens to Messrs. Judge, Pollack and Orcutt..... 195

25 Handwritten document bearing production Nos. 91817243 through 91817245..... 205

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27	Letter dated November 24, 1981 from Mr. Stevens to Mr. Sirridge.....	224
28	Letter dated April 21, 1992 from Mr. Wachtell to Mr. Stevens.....	226
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32	Memorandum dated November 16, 1970 from Dr. Spears to Messrs. Judge and Stevens...	251
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34	Handwritten document dated 4/21/78 headed "Scientific Research Liaison Committee".....	262
35	Report entitled "Report on Policy Aspects of the Smoking and Health Situation in the United States of America, U.S.A." dated October 1964.....	266

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38 Memorandum dated July 16, 1976 from Mr. Ireland to Dr. Minnemeyer..... 281

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